

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
CORAM RESOURCES NETWORK, INC.,)
and CORAM INDEPENDENT PRACTICE) Case No. 99-2889
ASSOCIATION, INC.,) (MFW)
Debtors.)

Bankruptcy Courtroom
No. 1, Sixth Floor
Marine Midland Plaza
824 Market Street
Wilmington, Delaware

Thursday, December 21, 2000
1:35 p.m.

BEFORE: THE HONORABLE MARY F. WALRATH,
United States Bankruptcy Judge

-- Transcript of Proceedings --

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1 I'll never know whether we would be in the same boat
2 today or whether a different plan would have been
3 proposed by the debtor. The problem is for the last year
4 the debtor has been run by a man who had a secret,
5 undisclosed -- as far as the terms of the contract --
6 agreement with one of the significant creditors in the
7 case.

8 MR. MILLER: That's true.

9 THE COURT: You'll just never know and
10 that's the problem with conflicts of interest.

11 MR. MILLER: I would like you to take some
12 comfort from one fact, and Your Honor can check the
13 records because Your Honor can take judicial notice:
14 These notes are unsecured. Had these creditors
15 controlled this debtor, do you think seriously these
16 notes would be unsecured notes?

17 I'll close with that. Thank you,
18 Your Honor.

19 MR. LEVY: Your Honor, first forgive my
20 voice, please. Before I go to the remarks I had
21 prepared, many of which Your Honor has anticipated, and
22 that will save time, let me just cover two statements
23 that were made about the record that I think are wrong.

24 First, Mr. Friedman told us that the reason

1 that the interest was paid in cash rather than PIC was
2 kind of a putting bread on the water. That's
3 Mr. Friedman's testimony. It just isn't there at all in
4 Mr. Crowley's testimony. Mr. Crowley talked about it at
5 page 100 of his cross, and all he argued was, I think,
6 kind of preposterous notion that he didn't want to add to
7 the debt, the burden the company was going to have to
8 bear.

9 Second, with respect to the so-called
10 sophisticated directors. First of all, let's take
11 Mr. Amaral.. Mr. Amaral, as the record shows, received a
12 million dollar bonus from Coram at the time that the
13 Securities Exchange Agreement was negotiated, and there
14 was a provision in the Securities Exchange Agreement that
15 he had to stay as chairman and it would be a default if
16 he didn't.

17 That suggests -- at least suggests -- some
18 relationship with Mr. Feinberg who also told Mr. Amaral,
19 according to Mr. Amaral's testimony, that if he wanted a
20 job like Mr. Crowley's job being a CEO of troubled
21 companies, he would be interested.

22 Now, as to the other two directors,
23 Your Honor, it's fine. My friends here say they are
24 sophisticated, but there is no evidence at all about

1 that. Those people who have the burden of showing that
2 this plan is fair didn't come in here. And, Your Honor,
3 we didn't have time to go out to California and get them.
4 Enough about that.

5 Let me now talk about Zenith, which
6 certainly is the road map here. We have heard a lot of
7 talk about fair under the Bankruptcy Code. Except for a
8 brief remark by Mr. Gewertz, we heard nothing about the
9 entirely fair standard of the Weinberger case.

10 Now, why does entirely fair apply here?
11 Well, there is the obvious domination, but there is a lot
12 more. If you want the benefit of the business judgment
13 rule, you have to use due care.

14 Due care, in situations like this, with a
15 transaction with people on both sides, requires, as
16 Your Honor pointed out, an independent counsel to the
17 independent directors. It requires an independent
18 financial advisor. It requires some independent action.

19 There is nothing in this record to show
20 that these two independent directors ever sat down alone,
21 away from Mr. Crowley, away from Mr. Feinberg and said,
22 let's take a look at this. Let's use the due care the
23 law requires that we use so we can get the benefit of the
24 business judgment rule. They didn't do it. And when

1 they didn't do it, they subjected themselves to the
2 entirely fair rule.

3 So that, then, moves us into entirely fair.
4 Again, I'm not going to repeat Your Honor's statements,
5 but we know that, as you said, at the April 5th meeting
6 there was a resolution that Mr. Friedman brought that
7 said that the independent directors are authorized to
8 hire independent counsel, independent financial advisors,
9 and they never did anything like that.

10 But the thing that they did that I think is
11 the worst thing that happened here was the conduct with
12 respect to the delay in time. Mr. Crowley testified in
13 his deposition and here that he didn't know until March
14 or April that Stark II was going to be a problem. I
15 remember asking him more than once, Are you sure? Are
16 you sure?

17 Well, Your Honor will recall that I then
18 showed him a December 15th fax from Ernst & Young
19 addressed to him talking about Stark II. I showed him
20 minutes of three meetings in December which talked about
21 Stark II and the problem and the need for reorganization.
22 He still adamantly insisted at page 76 of his transcript
23 that he didn't know about Stark II and how serious it was
24 before March or April.

1 Now, in December of 1999 they appointed a
2 special committee. Mr. Amaral testifies it never
3 functioned. So that special committee, for all purposes,
4 didn't exist.

5 The only special committee there ever was
6 was the one that was appointed one week before the
7 bankruptcy, and their only function was to see if it was
8 fair. They weren't even out there negotiating. They
9 didn't have anybody supporting them professionally. So
10 to say they're fine, upstanding, independent people as
11 Mr. Crowley does is fine for him to say, but it is
12 certainly not in accordance with Delaware law about
13 discharging the fiduciary duty of due care.

14 Now, what I think really happened here,
15 Your Honor, is that on February 15th, there is a meeting,
16 and that's shown in EC-5, and that's not a document that
17 was discussed, but it is in evidence, there was a meeting
18 between the company and the three lenders. The purpose
19 was to discuss the situation of the company and the
20 Stark II problem that they had known about for three
21 months that was going to clearly be a problem at the end
22 of this year.

23 Following that meeting, Mr. Crowley writes
24 a letter on February 28th, and that's EC-25, and that

1 letter is notable for two reasons.

2 First of all, he knew the third week in
3 January, eleven months ago, that he would need to file a
4 Chapter 11 petition because you'll find attached to that
5 letter a memorandum, it's on Bates page 103 on EC-25, a
6 letter from Paul Weiss, from a bankruptcy lawyer there
7 trying to get the business, dated January 24th talking
8 about, "As I discussed in Denver, I attach an outline of
9 the steps needed to develop and implement a consensual
10 restructuring."

11 In the letter itself he says to his
12 directors, February 28th, that he intends to initiate a
13 process aimed at restructuring Coram, and because of
14 Stark II, we must restructuring, and he says virtually
15 nothing else is going to alleviate the need.

16 Now, I think what happened here,
17 Your Honor, is somewhere at this point, somebody got a
18 good idea. They said, hey, instead of trying to raise
19 \$75 million or \$100 million, let's solve it a different
20 way. Let's get rid of all the equity that Stark II says
21 that doctors have to fill out reports. We know that
22 Cerberus isn't a doctor or Goldman Sachs or Foothill.

23 That, I suspect -- and I only suspect, but
24 I think it's a reasonable inference -- was the beginning

1 of the notion of let's get rid of the equity. It
2 conforms with a couple of things.
3 Right at this time, and in this same
4 letter, Crowley writes his letter saying give me more
5 money or I'm going to quit. Now, at that point he had a
6 million options. At that point, up to that point, he was
7 driven to raise the value of the stock. That's how he
8 would make money. Now the equity is gone. He wants
9 something else.

10 So he negotiates a contract which he said
11 from that witness stand will get him \$13 million for a
12 job that I guess wasn't so good. Who does he negotiate
13 it with? He negotiates it with Feinberg. It's approved
14 at a compensation committee meeting on March 22nd. It's
15 signed by Mr. Feinberg on April 6th after discussion but
16 not approval by the board. There is just nothing in this
17 record that says that this independent, sophisticated
18 board ever approved that.

19 THE COURT: Well, Mr. Amaral testified it
20 was approved.

21 MR. LEVY: He did.

22 THE COURT: There are board minutes that
23 confirm that, but he testified the board considered it
24 and approved it.

1 MR. LEVY: He did, indeed. He did. But
2 again, there are no board minutes that say it.
3 Mr. Amaral certainly said it.

4 THE COURT: But let me, perhaps, cut to the
5 chase.

6 MR. LEVY: Please.

7 THE COURT: Let's assume that this is
8 correct, that your thesis is correct.

9 MR. LEVY: Right.

10 THE COURT: There was a conspiracy, and
11 that Mr. Crowley and Cerberus, and perhaps other members
12 of the board of directors willingly or simply led by
13 Mr. Crowley and Cerberus not knowing they were being led
14 down the garden path, and ultimately we are here on
15 December 21st at 3:10 p.m. with the plan that provides
16 that the equity is wiped out.

17 What is the alternative? What do you want
18 the Court to say? Deny confirmation.

19 MR. LEVY: It's certainly something we've
20 thought about, Your Honor.

21 First, I think we have to say, you know, to
22 use the all-proverbial saw about the child who kills his
23 parents and then pleads for mercy because he is an
24 orphan.

1 What I mean here is that they put
2 themselves in this position. If they had proceeded in
3 January, then this hearing wouldn't have been on
4 December 22nd. But we are here.

5 THE COURT: But like Solomon, you are
6 asking me to kill your child, too.

7 MR. LEVY: No, I'm not, and I have a
8 solution to keep the child alive.

9 THE COURT: Deny confirmation, the company
10 is dead.

11 MR. LEVY: Okay. Three points.

12 One, the debt can, and I have no doubt
13 will, because they are not going to let this company go
14 down, convert to a perpetual preferred which the
15 accountants will say is equity because there is no time
16 when it's due, they convert 100 million --

17 THE COURT: But the problem with that
18 proposal, I don't have the power to modify the plan, do
19 I? I can only confirm this plan or deny confirmation of
20 this plan. I'm somewhat restricted. There is no other
21 plan on the table.

22 MR. LEVY: Right. But, Your Honor, you
23 have to say, what are these people going to do if you
24 deny confirmation of the plan? They are now going to

1 have eight days. If it is correct, if Mr. Crowley was
2 correct that the company will go up in smoke, they are
3 going to have a decision to make. You can't make them do
4 it. You can't modify the plan. But what do we think
5 they are going to do? Are they going to be stubborn and
6 say we are going to wipe out all of our interest here, we
7 don't care, or they can convert.

8 Number 2, I have another plan, and that is
9 if you use the equitable subordination principle based on
10 the unfairness here and treat whatever the number is,
11 \$100 million of debt as equity, you've done it. You have
12 met with Stark II.

13 Number 3, Your Honor --

14 THE COURT: Well, but let me push you on
15 this.

16 MR. LEVY: Please.

17 THE COURT: As I see the evidence, the only
18 suggested conspirator on the noteholder side is Cerberus.

19 MR. LEVY: 116 million.

20 THE COURT: Well, don't they have -- is
21 that 116 million?

22 MR. MILLER: Whatever 35 or 36 percent of
23 250 million is, and I'm not good enough with numbers.

24 MR. LOW: The disclosure statement does say

1 116 million.

2 THE COURT: I know there was a discussion
3 with Mr. Feinberg, and he didn't have a calculator,
4 either.

5 So as punishment for their bad acts, if you
6 will, equitably subordinate the Cerberus portion of the
7 noteholder debt.

8 MR. LEVY: That solves Stark II.

9 There is a third response I want to give
10 Your Honor, and that is this: There is no question that
11 Stark II says what it says. There is no question that
12 they don't have an exemption.

13 But there is another step you have to take.
14 That is: Will it really wipe out the company? Now,
15 what's the evidence? Well, we have Mr. Crowley who says
16 that in his experience, he believes that the company will
17 go up in smoke if they have to comply. But what's his
18 experience?

19 He testified he never heard of Stark II in
20 any other company. He did not bring an expert in here.
21 He had an expert sitting in the courtroom here, a
22 healthcare expert, on the first day. He didn't bring
23 someone in. There's no basis for that.

24 I would suggest, Your Honor, that these

1 noteholders are pretty smart people. They are taking a
2 big chance here that you won't confirm the plan. They
3 deliberately took that chance. Maybe they took that
4 chance and that one of the things they considered, one of
5 the parts of their calculus was, well, maybe it's not so
6 bad. Maybe if Judge Walrath doesn't confirm our plan,
7 we'll get by for a while because, you know, we only have
8 2,500 stockholders. It's not like every doctor in the
9 world is a stockholder. I don't know if that is the
10 case.

11 But I would like to, if I may, turn --

12 THE COURT: But since it's a public
13 company, it's not simply a matter of identifying today
14 who are the shareholders. Because it's publicly traded,
15 isn't the problem that tomorrow a referring doctor could
16 buy a share and, therefore, every time we get a referral
17 from a doctor, we must make that doctor and every member
18 of that doctor's family within the Stark confines sign a
19 disclosure saying they are not a shareholder.

20 MR. LEVY: I think what you have to do is
21 add one more piece of paper to the pile of papers that I
22 know I fill out every time I go to see a doctor. I'm not
23 suggesting it's --

24 THE COURT: It's not the patient filling

1 out -- I know doctors have a little problem with filling
2 out forms.

3 MR. LEVY: Doctors do that, too.

4 Your Honor, can I turn your question around
5 a little bit and say, What if you do confirm this plan?

6 You write, forgive me, eloquent opinions. What if you do
7 confirm this plan and the opinion says because of the
8 problem of Stark II, I don't care that they delayed. I
9 don't care about a million dollar undisclosed statement.

10 What it really will say, Your Honor, to
11 people like Cerberus, and I don't mean this pejoratively,
12 but they are in the business, they are high-risk lenders,
13 what it will really say to them is, go buy management and
14 you can take over a company.

15 It will say that the courts have blessed
16 this kind of behavior. I know you don't want to do it
17 and I know that that is the solemn problem that
18 Your Honor is facing now.

19 I have a whole eleven pages here,
20 Your Honor, of description of the things and I'm not
21 going to go through them. You know the record better
22 than I do.

23 THE COURT: Isn't there an option five?

24 MR. LEVY: I would like to hear it.

1 THE COURT: Strike anything in the plan
2 such as the releases and the exculpation and -- not the
3 indemnification, but anything that would insulate
4 Mr. Crowley or Cerberus or any of the officers and
5 directors from any action by the shareholders regarding
6 the actions that they have taken, need I really decide
7 that they, by their delay, caused harm to the
8 shareholders, is that really a confirmation issue so long
9 as any cause of action on that is not released by the
10 plan, and so long as by my confirming the plan I make no
11 decision as to whether or not that type of activity rises
12 to the level of a suit by the individual shareholders
13 under Delaware law?

14 MR. LEVY: Well, I answer that, Your Honor,
15 by saying that the injury here was to the company, the
16 injury was to the company, not the shareholders for the
17 reason I heard you say, and that is if we had someone
18 watching out for the equity here, somebody truly
19 independent, if instead of Mr. Crowley it would have been
20 Mr. Unconflicted back in January, we might have had a
21 different result.

22 Now, I can't prove and nobody can prove
23 hypothetically that Mr. Unconflicted as CEO would have
24 done better, but there is certainly possible, but the

1 burden shouldn't be on the equityholders. The burden is
2 on the wrongdoers, and they haven't been able to show
3 that.

4 I think that giving the possibility of a
5 long, drawn-out class-action litigation to shareholders
6 is simply not the equivalent of the right of the equity
7 to not have a plan confirmed that doesn't meet the
8 entirely fair standard or the fairness standard of the
9 Bankruptcy Act.

10 That's why, with respect, I think the
11 solution No. 5 just doesn't go. You can't bless what
12 these people did.

13 Your Honor, on this matter of disclosure,
14 it's not sufficient for these lawyers to sit in here and
15 say I don't know why. These people filed public
16 statements with the Securities & Exchange Commission.
17 Every 10-K and I think every 10-Q has a section called
18 "Other Relationships" where you have to describe things
19 like that. The notion that a securities lawyer would
20 say, well, I'm not going to ask you if you are getting
21 this million-dollar-a-year conflicting payment is silly.
22 Of course they had to disclose it.

23 The argument which I heard here that
24 Mr. Crowley is such a rich man or a man of such integrity

1 that a million dollars is unimportant to him, it simply
2 doesn't fly. It doesn't solve the conflict. The
3 conflict exists no matter what the purity of
4 Mr. Crowley's soul.

5 Your Honor also mentioned the smell test.

6 That's EC-20, the private records, Your Honor.

7 Mr. Crowley testifies that it is a throw-away letter, a
8 cold proposal after testifying that he asked for the
9 relief that's in it immediately before he sent it. Then
10 look at it. Can you honestly believe that that's the way
11 Mr. Crowley would write a proposal? I just don't think
12 you can.

13 I guess I really ought to get back to what
14 I think is the central matter of what's troubling
15 Your Honor.

16 Mr. Friedman talked mostly about valuation.
17 I'm not going to argue who was the more independent
18 appraiser or evaluator here.

19 THE COURT: Even under your valuation you
20 are not going to meet Stark in ten days.

21 MR. LEVY: Pardon me?

22 THE COURT: Even under your valuation, the
23 company can't meet Stark in ten days.

24 MR. LEVY: I agree, absolutely right. I'm

1 going to come back to Stark in a minute. I just want to
2 make this point.

3 You can't isolate price from process. The
4 reason that process is important is because it increases
5 price. Bad process, bad price. Good process, good
6 price. I think that's what we learned from Weinberger
7 and from Zenith. You can't bifurcate them as Weinberger
8 said.

9 Look. It is ten days, Your Honor. It's
10 their fault that it's ten days. They've got to find the
11 solution. You can't. I can't. They can because if
12 Your Honor refuses to confirm this plan because of their
13 behavior, they are going to have a busy ten days. But
14 they've thought about it. They already asked you, by the
15 way, to extend the exclusive period into January. But
16 it's their problem. They did wrong. I believe they will
17 come up with a solution, Your Honor.

18 I believe they are trying to make you the
19 victim. They are trying to say you, this Court, are
20 going to make sick people even sicker. They are not
21 going to let that happen because it's going to cost them
22 too much money.

23 Your Honor, I think I'm through.

24 I would like to debate the very difficult

1 problem that I truly understand you face, but as you
2 debated, I guess I would just -- I guess --

3 Mr. Low just handed me a note that says,
4 and he is right, Mr. Crowley testified that preferred
5 would work.

6 But as you debate this, they did it. They
7 have the keys to their own jail cell. That's the reason,
8 and not my failing voice, that I think I'm going to sit
9 down and ask for those reasons that the plan not be
10 confirmed and then -- I'm not quite ready to sit down.

11 What happens if you don't confirm it? I
12 think they solve their problem. I think we then have
13 some time -- remember, the debt doesn't come due until
14 May, so we have time. We have time to have a process
15 here that is much more fair. We have time to see if the
16 company can be marketed. We have time to look at the
17 American investor story and you can pick at it and say
18 you used the wrong companies or you can say, hey, things
19 are getting better and everybody may come out fine if
20 Your Honor does that.

21 Thank you. Thank you for all the
22 attention.

23 THE COURT: Thank you.

24 MR. FRIEDMAN: Your Honor, I'll just be

1 very brief.

2 There is a pending class action, as I
3 mentioned in my opening statement, against the officers
4 and directors against Cerberus, against Foothill, against
5 Goldman, against everybody I know in this case other than
6 me, and I'm probably going to wake up one morning and
7 find myself named, as well.

8 Your Honor, it's the same issues that have
9 been raised in this case. The plan never purported to
10 release those claims to start with, so it's not as if you
11 need to make any modifications on that.

12 If there are claims, if there are
13 derivative claims that exist, they belong to the debtors.
14 If you wanted to give standing to the Equity Committee to
15 bring them going forward, that's an option you have.

16 I'm not aware of a theory by which you can
17 subordinate debt to equity. If that's a theory that the
18 Equity Committee wishes to bring going forward, I don't
19 know. I don't think it has merit, but I suppose they
20 would have the right to do that.

21 But I want to go back. I've been sort of
22 searching my soul since I sat down to try to figure out
23 how we got to this place.

24 Number 1, I don't have a solution despite

1 what Mr. Levy said. I don't have a solution to this
2 problem if you don't confirm the case. That's not your
3 problem, but I do want you to understand that.

4 The second thing is: How did we get here?

5 We got here under the theory that we would file a plan
6 based upon an independent valuation and then we would
7 invite whoever had a problem with it to raise their
8 voices with this Court.

9 Whatever Your Honor has observed about what
10 was disclosed in public filings or whether there was
11 less-than-full disclosure in the disclosure statement
12 cannot be said that in this litigation, in this court,
13 there hasn't been complete disclosure of all these
14 issues.

15 Our view, frankly, was, and I can't even
16 think of why, the question you asked Mr. Miller, I don't
17 have any answer to it, either, why the disclosure
18 statement says that there is an agreement but it doesn't
19 say how much. I just don't know. I'm trying to
20 remember. I don't even remember why it says what it
21 says.

22 What I do know is the general theory of
23 this debtor going into court was we are going to file
24 this plan, we are going to defend this valuation, and

1 what we are going to do is we are going to allow any
2 party who has a problem with it to have complete
3 disclosure.

4 I said at the first hearing that you
5 wouldn't hear any discovery fights in this case, and you
6 didn't. I've been in plenty of cases where Your Honor
7 has been called upon to deal with counsel fighting over
8 documents and depositions and discovery. You didn't hear
9 any of that in this case.

10 We made all proper disclosures since the
11 day we filed. We made all documents available. There is
12 no lack of understanding as to who gets what and whose
13 relationships are what. Our view was at the end of the
14 day the bankruptcy process would have a cleansing effect
15 on all these issues. Your Honor would ultimately decide
16 whether or not the valuation was appropriate, whether or
17 not the plan meets the salutary purpose of
18 rehabilitation. You confirmed the plan.

19 I honestly can tell you that from the
20 standpoint of those who worked on this plan, which
21 includes the Chanin people, our people, the debtors'
22 management, never in a single time -- this is not in the
23 record, but I feel the need to tell you -- there was
24 never a single moment when there was a piece of

1 information that we thought was relevant that we elected
2 not to include in a disclosure document. Never. This
3 particular point is one that I honestly cannot recall
4 ever arising.

5 So having said all that, I believe that the
6 failure by this Court to confirm this plan leaves us with
7 no solutions.

8 I think it's also very important to note,
9 Your Honor heard from Mr. Haydon, Your Honor heard from
10 Mr. Crowley. I think the evidence is consistent. There
11 is no other plan. I don't mean in a sense there is no
12 other plan on file. I mean there is no other plan.
13 There is no other source of equity for this company. No
14 one has pointed to any.

15 Just like there was a sophisticated debtor,
16 there was a sophisticated Equity Committee. If there was
17 any other person who had any interest in this company by
18 way of acquisition, by way of investment, by way of
19 financing, it would have surfaced. There is nobody
20 there.

21 So the ultimate effect of not confirming
22 the plan is we'll go into next year, we'll have
23 incredibly serious problems, and if we manage to solve
24 those problems, we'll come back to the Court at some

1 point with another plan or sale or some other vehicle
2 that I think there is no basis to conclude will result in
3 anything other than creditors getting less and the
4 equityholders still getting nothing.

5 So, Your Honor, if the issue is that
6 somebody did something wrong, and I'm not suggesting
7 that, and I'm certainly not endorsing that view, but if
8 that's the point, there is redress in the courts, but I
9 don't think that the answer is to put this company out of
10 business:

11 Thank you.

12 THE COURT: Well, I'm in a difficult
13 situation. I would like to sidestep my duties, but I
14 think I have to determine in deciding whether to confirm
15 this plan under 1129(a)(3), I must conclude that it is
16 proposed in good faith and that the plan proponents have
17 acted in good faith. I just do not want to be in a
18 position to conclude on this record that that is so. I
19 cannot conclude on this record that that is so.

20 I think that the contractual relationship
21 between Cerberus and the CEO, Mr. Crowley, did taint the
22 process, and I think that, if anything, the ultimate
23 fairness of the process in bankruptcy is a paramount
24 principle to be protected by the Bankruptcy Court.

1 Maybe we would be at the same place today
2 if that contractual relationship had not been there, if
3 it had been disclosed to all parties, but I don't know
4 that and I don't think anybody will know that.

5 We are at a terrible place. The Equity
6 Committee, even on its numbers, which I agree with the
7 Creditors' Committee's counsel and their valuation expert
8 and the cross-examination of the Equity Committee expert
9 does point out the questionable nature of that valuation.

10 I think under any of the numbers the
11 company is insolvent today. But I don't think I can
12 confirm a plan based on that fact because I think that
13 because of the process being tainted by this relationship
14 which began in November of 1999, and perhaps in August of
15 1999, has so tainted the debtors' restructuring of its
16 debt, the debtors' negotiations towards a plan, even the
17 debtors' restructuring of its operations.

18 I think on that point I think it is a shame
19 that Mr. Crowley and perhaps Cerberus and the debtor
20 itself is tainted in this manner because I think there is
21 evidence that Mr. Crowley did do a good job operationally
22 in helping the debtor turn around. But I can't conclude
23 that the debtor might not have done even better had there
24 not been this relationship. I don't know. That's the

1 problem. I don't know what would have happened without
2 this actual conflict of interest. I do think it's an
3 actual conflict of interest.

4 I think that the actions of Mr. Crowley to
5 hide the relationship, and I think that EC-20 did show an
6 intent to hide the relationship and to hide his request
7 for additional compensation in Winterland in exchange for
8 his efforts here did at least evidence that he, himself,
9 believed that this relationship should not be disclosed
10 and, therefore, did, in fact, taint his ability to serve
11 as CEO of the debtor.

12 Whether it opens up a Pandora's box or
13 encourages other noteholders or other parties in future
14 bankruptcies to try the same thing, I'm not as concerned
15 about that, but I just do not want my name confirming a
16 plan where this type of activity occurred for a year
17 before the plan was proposed for confirmation. I just
18 cannot conclude that it's proposed in good faith for
19 those reasons.

20 I do not have the ability to suggest a
21 different plan. I do not have the ability to give an
22 exemption from Stark II.

23 So I leave it to the debtor to see where it
24 goes from here for now. I'll look for a form of order if

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1 someone wants to present me with one.

2 MR. MINUTI: We will, Your Honor.

3 THE COURT: We'll stand adjourned.

4 MR. LEVY: Thank you, Your Honor.

5 (The hearing was then concluded at

6 3:35 p.m.)

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Gold via
DIRECT
CROSS 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
CORAM HEALTHCARE CORP. and) Case Nos. 00-3299
CORAM, INC.,) through 00-3300 (MFW)
Debtors.) Jointly Administered

United States Bankruptcy Court
Courtroom No. 1
Sixth Floor
824 North Market Street
Wilmington, Delaware 19801

November 5, 2001
9:40 a.m.

BEFORE: HONORABLE MARY W. WALRATH
United States Bankruptcy Judge

WILCOX & FETZER, LTD.
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

1 THE COURT: Good morning.

2 MR. FRIEDMAN: Good morning, Your Honor, we
3 are back. This is the -- this is our confirmation
4 hearing on our second plan, and there are -- let me just
5 deal with a couple housekeeping matters first. There was
6 a motion filed by the Equity Committee, in limine motion,
7 to exclude the testimony and report of Goldin Associates.

8 Their concern was that the -- that the
9 testimony would be of a nature in which Mr. Goldin would
10 be speaking to statements that he had heard and we would
11 then be seeking to introduce those statements for their
12 truth. Our response in the case, for purposes of which
13 we wish to introduce the Goldin testimony report, and I
14 believe, on that basis, that motion is moot.

15 We are not seeking to accomplish that which
16 has been suggested. Rather, what we are seeking to do is
17 to introduce the testimony and report to show the
18 retention of the firm, the investigation that it
19 performed, the methodologies used, the conclusions that
20 were reached, and the recommendations made to the
21 company's independent directors, not that any particular
22 statement or document or -- or, any other fact that might
23 have been discovered along the way is true or not true.

24 MR. LEVY: Your Honor, I believe that's

1 right. Our original motion, in fact, said we had no
2 objection to it coming in, but nothing comes in for the
3 truth, is our understanding, and, on that basis, we can
4 withdraw the motion or stipulate or whatever, simply
5 recognize it, Your Honor.

6 THE COURT: All right.

7 MR. LEVY: Might I also mention, we were
8 handed, about ten minutes ago, debtors' response to the
9 Equity Committee's objections. Now, I have no problem
10 with their filing a response. I just -- it's kind of
11 late, and I hope it doesn't become part of today's
12 hearing. Even with my speed reading class, I haven't
13 read it.

14 THE COURT: I haven't read it either, but I
15 assume, since this is a several-day hearing, we'd all get
16 a chance to look at it and respond.

17 MR. LEVY: Thank you.

18 MR. FRIEDMAN: Your Honor, from our side,
19 we are indifferent about opening statements. The Equity
20 Committee has asked for five minutes. If you want to
21 hear five minutes of opening statements, we can do it.

22 THE COURT: I don't know that it's
23 necessary. I have read the --

24 MR. LEVY: Your Honor, and I think --

Harrison J. Goldin - Cross-Examination

50

1 A. Yes, sir.

2 Q. Now, your draft report went out on June 29th?

3 A. Yes, sir.

4 Q. Isn't it a fact that, on July 2nd, three days

5 later, an e-mail was sent to Mr. Lemanski -- he works for

6 you; right?

7 A. Yes, sir.

8 Q. -- in which he said, Subject, Coram.

9 MR. LOW: From.

10 MR. LEVY: I am sorry, it was, from, of
11 course -- no. It was sent to Mr. -- I am sorry, from
12 Deloitte & Touche, and, forgive me, Your Honor, I am
13 reading from a blackberry. We just retrieved this, from
14 Deloitte & Touche to you, saying, Pursuant to our
15 discussion earlier today, please provide D&T with
16 additional information regarding the following in
17 reference to the Goldin draft report circulated Friday --
18 this is on Monday -- one, source of the unadjusted
19 infusion EBITDA of \$30.8 million.

20 That relates to the area where you
21 acknowledged you made a mistake; right?

22 A. I am not familiar with that e-mail, Mr. Levy, so
23 it's difficult for me to comment.

24 Q. Second, Deloitte asks -- Deloitte, on behalf of

Harrison J. Goldin - Cross-Examination 55

1 therefore, I am unable to respond, in any meaningful way,
2 to the implications of either.

3 Q. Okay. Let's --

4 A. Mr. Levy, may I turn this off for you or would
5 you like me to leave it on?

6 MS. MINOR: If I could return it to its
7 owner.

8 THE WITNESS: I have one of my own. I know
9 the batteries wear down.

10 BY MR. LEVY:

11 Q. Do you have a copy of the updated report in
12 front of you?

13 A. Yes, sir.

14 Q. You may want to refer to this, but I note that,
15 on page 3 of the updated report, you observe that the
16 Court found that Crowley's relationship with Cerberus,
17 and I quote, gave rise to an actual conflict of interest
18 which tainted the Debtors' restructuring of its debt, the
19 Debtors' negotiations toward a plan, even the Debtors'
20 restructuring of its operations.

21 Do you see that?

22 A. Yes, sir.

23 Q. Mr. Goldin, you agree, don't you, that Crowley's
24 relationship tainted all the various aspects of this

Harrison J. Goldin - Cross-Examination 60

1 deposition, that Crowley was continuing to get paid
2 80,000 a month by Cerberus?

3 MR. FRIEDMAN: Objection, Your Honor,
4 assumes facts not in evidence. There is no establishment
5 of that fact.

6 MR. LEVY: May I --

7 THE COURT: Sustained. You may ask another
8 question.

9 BY MR. LEVY:

10 Q. Do you know who L. Peter Smith is?

11 A. Yes, sir.

12 Q. I took Mr. Smith's deposition in September, and
13 the following question and answers were given: Question,
14 Did you ever ask Mr. Crowley whether he was continuing to
15 receive payments from Cerberus? Answer, No.

16 MR. MILLER: Your Honor, may we have a page
17 and a line?

18 MS. MINOR: I am sorry, 85, line 24 through
19 four.

20 BY MR. LEVY:

21 Q. Answer, No.

22 Do you know, today, whether he is
23 continuing to receive payments from Cerberus? Answer,
24 No.

Harrison J. Goldin - Cross-Examination 96

1 and if we can get Danitz done today, we will definitely
2 finish by Wednesday, so I will try to be quick on my end
3 of Danitz and maybe we can get through.

4 MR. LOW: Your Honor, what is the schedule
5 of the rest of the week? We are starting at 12:30 on
6 both of those days?

7 THE COURT: Yes.

8 MR. LOW: Will we have the rest of the
9 afternoon or just part of the days?

10 THE COURT: You will have the rest of the
11 afternoons starting at 12:30 tomorrow and on Wednesday.

12 MR. MILLER: Your Honor, the train
13 schedules have changed a little bit, and I was wondering
14 if we could start ten or 15 minutes late tomorrow and
15 Wednesday. That gives us another hour in our offices
16 since we are here all day today.

17 THE COURT: Do you want to start at one?

18 MR. MILLER: 12:45 would work.

19 MR. GEWERTZ: Train arrives on the half
20 hour.

21 THE COURT: All right. That's fine.

22 All right. We will stand adjourned.

23 (Recess taken.)

24 MR. LEVY: Your Honor, if I may, I would

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VOLUME 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

DANVITZ CROSS
+ REIRECT

In Re:

CORAM HEALTHCARE CORP. and)
CORAM, INC.,) Case No. 00-3299
Debtors.) through 00-3300 (MFW)

United States Bankruptcy Court
824 Market Street - Sixth Floor
Courtroom No. 1
Wilmington, Delaware

November 6, 2001
1:40 p.m.

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE MARY F. WALRATH, JUDGE.

WILCOX & FETZER, LTD.
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

1 THE COURT: Good afternoon. Thank you for
2 starting later. We can proceed.

3 MR. FRIEDMAN: I think we were in the
4 middle of the cross-examination of Mr. Danitz.

5 THE COURT: Yes.

6 SCOTT R. DANITZ,

7 having been previously sworn as a witness,
8 was resumed on examination and testified
9 further as follows:

10 CROSS-EXAMINATION

11 BY MR. LOW:

12 Q. Good afternoon, Mr. Danitz.

13 A. Good afternoon.

14 Q. Let's talk briefly about liabilities. You have
15 Exhibit 7 in front of you?

16 A. The debtors' or equity?

17 Q. Debtors' Exhibit 7.

18 A. Yes.

19 Q. This is a schedule that was prepared under your
20 direction actually yesterday. Correct?

21 A. It was completed yesterday morning.

22 Q. We got it sometime later yesterday morning. So
23 I may not have as crisp a questions as I would
24 otherwise have. Let me do the best I can given the *

15 Q. Mr. Danitz, let me show you what's been marked
16 as Exhibit EC 19.

17 MR. MILLER: Excuse me. May I have a
18 copy, please?

19 MS. MINOR: You certainly may.

20 MR. LOW: Sorry. Do we have a missing
21 page?

22 MS. MINOR: Just this one.

23 MR. LOW: I'm not going to the top page.

24 BY MR. LOW:

Danitz - Cross

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1 Q. Mr. Danitz, can you identify this document?

2 A. This was an executive overview that was
3 provided to the board of directors at the July board
4 meeting related to the forecast that was done at the
5 July time frame for 2001 through 2005.

6 Q. If you will look past where the text leaves off
7 at about the sixth page and the schedules begin. Can
8 you identify those schedules?

9 A. Yes. These are some of the assumption
10 schedules that were included in reference to in the
11 narrative.

12 Q. You did this July forecast for the purpose of
13 the reorganization?

14 A. This one was done because of the second plan

6 MR. LOW: Nothing further.

7 THE WITNESS: Thank you.

8 THE COURT: We're done for today?

9 MR. FRIEDMAN: We're done.

10 MS. MINOR: One thing for the record. At
11 the end of Mr. Goldin's testimony the debtors asked to
12 hold off on deciding about the admissibility of Equity
13 Committee Exhibits 1 through 11. Mr. Friedman still
14 hasn't had a chance to look at them. So he said he'd
15 look at them today. So we'll let you know about their
16 decision tomorrow.

17 MR. FRIEDMAN: Your Honor, could we start
18 at 1:00 o'clock tomorrow?

19 How long do you think it will take on
20 cross tomorrow? I'll be a half an hour.

21 THE COURT: Who can we look forward to
22 hearing from tomorrow?

23 MR. FRIEDMAN: You will hear from somebody
24 new.

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1 MR. LOW: Somebody you never met.

2 MR. FRIEDMAN: Somebody you never met.

3 Somebody I only met once or twice. Donald Amaral.

4 MR. LEVY: An hour, hour and a half, I'd

5 guess.

6 MR. FRIEDMAN: I think if we start by
7 1:00, we'll be finished by 4:00 for sure.

8 THE COURT: Let's start at 1:00 then.
9 We'll stand adjourned.

10 (Hearing adjourned at 5:07 p.m.)

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4 SCOTT R. DANITZ -- 225 311 --

Volume 3

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:
CORAM HEALTHCARE CORP. and) Case No. 00-3299
CORAM, INC.,) through 00-3300
Debtors.) (MFW)

Bankruptcy Courtroom
No. 1, Sixth Floor
Marine Midland Plaza
824 Market Street
Wilmington, Delaware

Wednesday, November 7, 2001
1:00 p.m.

BEFORE: THE HONORABLE MARY F. WALRATH,
United States Bankruptcy Judge

-- Transcript of Proceedings --

WILCOX & FETZER
1330 King Street - Wilmington Delaware 19801
(302) 655-0477

1312
01/15/02

1 MR. FRIEDMAN: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MR. FRIEDMAN: We would like to move along
4 with the hearing. We have another witness to call.

5 THE COURT: All right. Somebody wants to
6 be heard.

7 MR. VAGNONI: If I may, Michael Vagnoni on
8 behalf of the Creditors' Committee for Coram Resource
9 Network, Inc.

10 We filed an objection in this case. I've
11 also filed a motion pro hac. It has not been ruled upon
12 yet. Our local counsel has been with me for the last two
13 days. He had an emergency today and couldn't make it. I
14 request permission to address the Court.

15 THE COURT: I'll allow it.

16 MR. VAGNONI: It's my understanding this
17 testimony is going to be, after testimony today,
18 continued to the 27th so that the committee can put on
19 its case.

20 We are planning on calling, I believe, two
21 witnesses, and that's going to be at least a half day of
22 testimony. I just wanted to alert the Court to that and
23 then we will be putting on our argument after that.

24 THE COURT: As well as the Equity

1 Committee.

2 MR. LEVY: I guess we would like to know
3 who the witnesses are.

4 MR. VAGNONI: I believe it is going to be
5 George Miller. George Miller is the accountant for the
6 committee.

7 MR. FRIEDMAN: Your Honor --

8 MR. LEVY: Do you have a report for
9 Mr. Miller?

10 THE COURT: Counsel, are we having these
11 comments on the record or among ourselves?

12 MR. LEVY: I am going to sit down and
13 withdraw everything I said. Mr. Low said I don't care.

14 THE COURT: Okay.

15 MR. FRIEDMAN: A couple of things.

16 First of all, we have not been advised
17 until this date that they intend to call any witnesses.
18 Their objection is, I think, two pages. The thrust of
19 their objection is that --

20 THE COURT: I don't want to hear --

21 MR. FRIEDMAN: There are no facts that are
22 raised in the objection. The objection simply says that
23 we don't treat the claim of the R-NET estate against
24 Coram in a proper manner.

1 THE COURT: I'll reserve until that time
2 any objection on relevancy grounds. I don't know what
3 they are going to say, either, but I guess we'll wait and
4 get their proffer.

5 MR. FRIEDMAN: Could we have at least a
6 direction that by tomorrow we are made aware of who their
7 witnesses are and that we have the opportunity to depose
8 them prior to the 27th?

9 MR. VAGNONI: That's fine, Your Honor.

10 THE COURT: All right.

11 MR. FRIEDMAN: Thank you.

12 MR. VAGNONI: Thank you, Your Honor.

13 THE COURT: Do I need to find additional
14 dates? You'll be half a day of testimony.

15 The Equity Committee will be how long?

16 MR. LEVY: We have two witnesses,

17 Your Honor, an accountant and an evaluation expert. It
18 could be a whole day with cross-examination.

19 MR. LOW: We also have the Creditors'
20 Committee who comes first.

21 MR. LEVY: And the Creditors' Committee
22 plans to put --

23 MR. GEWERTZ: Shouldn't take an hour and a
24 half. The last time it took two hours and he has already

1 been qualified. So it wouldn't take more than that.

2 Probably less.

3 MR. LEVY: You had mentioned November 30th.

4 You said you weren't going to write it down, as I recall,

5 but I would think we are going to need that. Then

6 perhaps you want to schedule a day -- maybe November 30th

7 is the day for final argument.

8 MR. FRIEDMAN: While you are looking, can I
9 say one thing?

10 THE COURT: Yes.

11 MR. FRIEDMAN: November 30th is a Friday,

12 and for religious reasons, I don't have a full day on

13 November 30th because I won't be able to work past 2:00.

14 So if that could be kept in mind in terms of the

15 scheduling. If there are going to be witnesses from the

16 R-Net Committee, we would probably need another day.

17 THE COURT: I'm checking on the 30th. I
18 believe that the other hearing on that day has been
19 continued. So I may be able to just hear you in the
20 morning and recess in sufficient time for everybody to
21 get back.

22 The other day I have the 27th, the whole
23 day.

24 MR. FRIEDMAN: Okay.

1 THE COURT: If we don't conclude, then
2 let's pick a date after that day.

3 MR. FRIEDMAN: Okay. One last thing.

4 I don't know whether there are going to be
5 any deposition designations by the Equity Committee --

6 MR. LEVY: There are.

7 MR. FRIEDMAN: So could we have that prior
8 to the 27th, a couple days?

9 MR. LEVY: Absolutely. The 25th, let's
10 say.

11 MR. FRIEDMAN: So we'll cross designate
12 anything that we would need.

13 MR. MILLER: The 23rd is the Friday after
14 Thanksgiving.

15 MR. LOW: The Wednesday before Thanksgiving
16 we would want.

17 MR. MILLER: That's good.

18 MR. LEVY: The 23rd. And you'll give us
19 yours --

20 MR. FRIEDMAN: The Tuesday after
21 Thanksgiving. Is that okay? Tuesday or Wednesday.

22 MR. LOW: The Tuesday after Thanksgiving is
23 the hearing.

24 MR. FRIEDMAN: Monday then.

Amaral - Direct

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1 the CEO of Coram after the time the conflict was
2 identified but prior to the issuance of the Goldin
3 report?

4 A. No. We were -- no, we never asked Mr. Crowley
5 to step down or even considered that. We were more
6 concerned that the company was in such a tough situation
7 that he may become disgusted and leave the company, so we
8 were concerned because there was no one that could step
9 back in immediately and hold the company together.

10 Q. Did you have a view at this time as to what
11 would happen to Coram if Mr. Crowley left it?

12 A. We would perish.

13 Q. Now, after the decision by the Court in December
14 of last year, did you have a discussion with Mr. Crowley
15 about the Court's findings?

16 A. Me, on a one-on-one basis, no, but we met with
17 Mr. Crowley. All the independent outside directors met
18 with him and he discussed the situation.

19 Q. What do you recall him saying?

20 A. That he reminded us of the relationship. He
21 told us of the dollar amount and that it was still in
22 force today.

23 Q. Have you given any consideration to whether
24 Coram would have performed better had it been run by a

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1 State of Delaware)
2 County of New Castle)

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C E R T I F I C A T E

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I, Kathleen White Palmer, Registered
Professional Reporter and Notary Public, do hereby
certify that the foregoing record, pages 384 to 493,
inclusive, is a true and accurate transcript of my
stenographic notes taken on Wednesday, November 7, 2001,
in the above-captioned matter before the Federal
Bankruptcy Court.

10

IN WITNESS WHEREOF, I have hereunto set my hand
and seal this 8th day of November, 2001, in
New Castle County.

12

13

14

KATHLEEN WHITE PALMER,
Notary Public-Reporter

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1 questions.

2 THE COURT: We are done for the day?

3 MS. MINOR: If we could move --

4 MR. FRIEDMAN: Can Mr. Amaral be excused?

5 THE COURT: Yes. You may step down.

6 THE WITNESS: Thanks.

7 (The testimony was then concluded at this

8 time.)

9 MS. MINOR: At this time we would like to
10 move into evidence EC Exhibits 1 through 11, as well as
11 EC Exhibits 12 through 33. 12 through 26 already came
12 in.

13 THE COURT: 12 through 25 came in. Did 26
14 come in after Mr. Scroggins' testimony?

15 MS. MINOR: I believe 26 came in, didn't
16 it?

17 MR. FRIEDMAN: If it didn't, we don't
18 object.

19 THE COURT: Okay. I'll admit 26.

20 What's the debtors' position on --

21 MR. FRIEDMAN: I only have one that I care
22 about, which is 9.

23 MR. MILLER: Nine we have a problem with.

24 MR. FRIEDMAN: Nine is the demonstrative

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
CORAM HEALTHCARE CORP. and) Case Nos. 00-3299(MFW)
CORAM, INC.,) through 00-3300(MFW)
Debtors.) Jointly Administered

United States Bankruptcy Court
Courtroom No. 2A
844 North King Street
Wilmington, Delaware 19801

November 27, 2001
9:30 a.m.

BEFORE: THE HONORABLE MARY F. WALRATH
United States Bankruptcy Judge

Transcript of Proceedings.

WILCOX & FETZER, LTD.
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

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01/15/02

1 THE COURT: Good morning.

2 MS. LEVY: Good morning, Your Honor.

3 The first matter on the agenda is the
4 equity's committee renewed application for authorizing
5 retention of Lexicon. Let me very briefly explain why we
6 filed this motion and the very limited relief we are
7 seeking today. We plan to present Mr. Fishell this
8 Friday as a witness that we think will contribute to the
9 equity committee's case. We did not want to be in a
10 position -- as it should be clear from our motion, we are
11 seeking no compensation at this point from the estate.
12 We did not want to be in a position where, after that
13 testimony, if we come in and ask for compensation, the
14 debtor says, too late, nunc pro tunc. So that, as far as
15 I'm concerned, entering this order and continuing it
16 until after the testimony would be perfectly
17 satisfactory. Our protective motion is filed.

18 Now, we understand from the responses and
19 from conversations that the debtors and creditors'
20 committee object to our calling the witness. I think I
21 won't address that at this point. I'll let them present
22 their objection. If that's what they want to do, we'll
23 respond to that.

24 THE COURT: All right.



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1 MR. FRIEDMAN: Your Honor, we understood
2 that when you denied the Lexicon retention, it wasn't
3 simply a question of money. It was a question of whether
4 or not their testimony would be additive to this process,
5 and, Your Honor, I think it goes without saying that
6 expert testimony only exists to the extent necessary to
7 aid the trier of fact. That's always the case with
8 expert testimony. And Your Honor is the trier of fact.
9 And obviously, to the extent that Your Honor views it to
10 be necessary, then Your Honor is free to hear that
11 testimony. But we thought the Court was clear at the
12 last hearing that the testimony of Lexicon was not
13 necessary. I don't think I need to quote the Court's
14 statement, although it is in our papers, but Your Honor,
15 I think, made the observation that whatever Lexicon would
16 testify was something that could be brought out on
17 cross-examination.

18 And, Your Honor, I believe that in their
19 papers the equity committee itself acknowledged that they
20 achieved exactly what the Court had suggested they
21 attempt to do. They stated in paragraph 5 of their
22 papers, quote, the committee believes that
23 Professor Fishell's expert insights and analysis will
24 demonstrate not only that the Golden & Associates report



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1 something that came up late in the game -- there is a
2 rule, Federal Rule 26, that requires rebuttal expert
3 testimony to be provided in a timely fashion within
4 30 days after the initial report comes out. They've
5 blown that deadline by a mile.

6 And given the untimeliness, given the fact
7 that his testimony is sought just three days from today,
8 given Your Honor's ruling about the necessity, given
9 their own comments about what a wonderful job they have
10 already done in connection with cross-examining
11 Mr. Golden, we think it's just a waste of time and ought
12 not to be considered not just an a matter of economics
13 but as matter judicial economy how this case proceeds and
14 fundamental fairness.

15 Thank you.

16 THE COURT: Does the committee wish to be
17 heard?

18 MR. GEWERTZ: Good morning, Your Honor.

19 Theodore Gewertz with the creditors' committee.

20 We filed an objection yesterday. If you
21 get past the untimeliness of this motion, which we laid
22 out, I think the debtor laid out in its objection,
23 assuming that the Court would hear it, it still is a
24 motion to rehear, and I think the standards on a motion



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1 THE COURT: Let's proceed with the day, and
2 we'll deal with Friday. And in the meantime, I'll try
3 and come up with another full day.

4 MR. LEVY: Good. Thank you.

5 MR. FRIEDMAN: Thank you.

6 One more thing, Your Honor, if I could, I
7 ask that date not be next Thursday or Friday.

8 THE COURT: Anybody else have any problems
9 with dates?

10 MR. MILLER: No. But I would like to
11 accept the offer to do Professor Fishell's testimony in
12 New York Thursday, if we are going to go ahead with him
13 on Friday, because I do have a commitment I can't change.

14 MR. LEVY: That is perfectly agreeable.

15 THE COURT: We'll deal with that.

16 MR. MILLER: Thank you, Your Honor.

17 MR. GEWERTZ: Your Honor, the committee
18 calls William C. McGahan.

19 THE CLERK: Place your hand on the Bible
20 and state your name for the record.

21 MR. MCGAHAN: Bill McGahan



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23
24
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1 BILL McGAHAN,

2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GEWERTZ:

7 Q. Mr. McGahan, you testified in this case last
8 year, is that correct?

9 A. I did yes.

10 Q. And at that time you presented a report of UBS
11 Warburg as to the enterprise value of the Coram as of the
12 date of the that report, correct?

13 A. Yes, I did.

14 MR. GEWERTZ: Your Honor, I think that
15 report has already been received in evidence here as
16 Equity Committee Exhibit 8. If I'm not --

17 MR. LOW: Last year?

18 MR. GEWERTZ: I think someone put it in
19 this year. Last year it was Creditors' Committee 1.

20 THE COURT: Equity Committee 8.

21 MS. MINOR: Last year Equity Committee 8.

22 (Discussion off the record.)

23 MR. GEWERTZ: Last year it was Creditors'
24 Committee 1.



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Bill McGahan - Direct (Ge rtz)

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1 interest. We did not factor that in. That was the
2 reduction from the enterprise valuation.

3 Q. And in doing valuation analyses, do you often
4 add what we call -- what experts like you call free cash
5 to the value?

6 A. It depends, yes. But sometimes we do.

7 Q. Was that done here?

8 A. It was not.

9 Q. Why not?

10 A. Because it's assumed that the company has, by
11 the end of this year, \$8 million on its balance sheet and
12 that's the number that it requires to run the business.

13 So in particular there is no free cash.

14 MR. GEWERTZ: That's all I have. Thank
15 you.

16 THE COURT: Do you want to take a short
17 break before cross?

18 MR. LOW: If you like, Your Honor,
19 certainly.

20 THE COURT: Let's take a short five-minute
21 break.

22 (Recess taken.)

23 THE COURT: Back on the record. Mr. Low.

24



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VOLUME II

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
CORAM HEALTHCARE CORP. and) Case Nos. 00-3299 (MFW)
CORAM, INC.,) through 00-3300 (MFW)
Debtors.) Jointly Administered

United States Bankruptcy Court
Courtroom No. 2A
844 North King Street
Wilmington, Delaware 19801

November 30, 2001
9:00 a.m.

BEFORE: THE HONORABLE MARY F. WALRATH
United States Bankruptcy Judge

Transcript of Proceedings

WILCOX & FETZER, LTD.
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477



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B75

1 THE COURT: Before we begin, my Monday
2 morning has freed up, if that helps anybody.

3 MR. LEVY: Excuse us, Your Honor.

4 (Discussion off the record.)

5 MR. LEVY: I think our consensus is thank
6 you, but we can't.

7 THE COURT: Unfortunately matters come off
8 one day before or two days before.

9 MR. FRIEDMAN: We appreciate the
10 opportunity.

11 THE COURT: Where are we?

12 MR. FRIEDMAN: We are in the middle of
13 cross-examination of Mr. Pfrang.

14 THE COURT: You are still under oath.

15 PHIL PFRANG,

16 the witness herein, having previously
17 been duly sworn on oath, was examined
18 and testified further as follows:

19 CONTINUED CROSS-EXAMINATION

20 MR. FRIEDMAN: Your Honor, before we begin,
21 as we concluded on Tuesday, we had marked as an exhibit
22 Debtors' Exhibit 11 which is a series of handwritten
23 notes. We've the agreement of the equity committee that
24 all of these notes but for the last page reflect the



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Phil Pfrang - Cross (Friedman)

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1 notes by Heather Orsi of a meeting that took place on
2 May 9 of this year.

3 So what we would ask the Court for
4 permission to do is to rip off the last page and then I
5 think we have an exhibit that we will all agree would be
6 acceptable.

7 THE COURT: All right.

8 MR. FRIEDMAN: I will do mine first.

9 Your Honor, having ripped off that page, we
10 will move D-11 into evidence.

11 MR. LOW: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Document, so offered and received in
14 evidence, was marked Debtors' Exhibit 11.)

15 BY MR. FRIEDMAN:

16 Q. Okay. Mr. Pfrang, when we left off you recall
17 we were talking about a drug called Vancomycin?

18 A. Yes.

19 Q. Do you recall that? And do you recall that you
20 testified on your direct examination that you didn't know
21 until September 4 when you saw the updated Golden report
22 that Vancomycin was an issue that related to Coram's
23 revenue and profitability. Do you recall that?

24 A. Yes.



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Phil Pfrang - Cross (Friedman)

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1 percentage changes in AWP. It's sort of a cryptic
2 analysis. So the answer is the company did give us
3 documents with the word Vancomycin contained in it.

4 Q. I'm sorry. I don't think I was clear in my
5 question. My question to you is, you don't recall a
6 specific information request from Deloitte to Coram that
7 mentions the term "Vancomycin?"

8 A. Prior to the issuance of our report?

9 Q. At any time.

10 A. I would have to qualify my answer. I'm almost
11 certain prior to the issuance of our report, after the
12 issuance of our report, and once we became aware of the
13 issues around Vancomycin. I would not be surprised at
14 all if one of my -- if one of the people on our team had
15 either asked over the phone or had asked in writing for
16 information from Coram relative to the impact of
17 Vancomycin.

18 Q. Do you still have your deposition out there in
19 front of you?

20 A. I don't think so. I left it here but --

21 MS. MINOR: It is up there.

22 THE WITNESS: There were two days of
23 depositions. One was sort of short little pages on a --
24 oh, that was it. I'm sorry.



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Phil Pfrang - Cross (Friedman)

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1 support that assumption?

2 A. I think that's consistent with my answers, yes.

3 MR. FRIEDMAN: Your Honor, could we take
4 just a break for a minute or two? I think I'm pretty
5 much done.

6 THE COURT: All right. Let's take a
7 five-minute break.

8 MR. FRIEDMAN: Thank you.

9 (Recess taken.)

10 MR. FRIEDMAN: Your Honor, we would like to
11 move Debtors' 12 through 15 into evidence.

12 THE COURT: Any objection.

13 MR. LOW: No objection Your Honor.

14 THE COURT: All right. They are admitted.

15 (Documents, so offered and received in
16 evidence, were marked Debtors' Exhibits 12 through 15,
17 inclusive.)

18 MR. FRIEDMAN: Thank you.

19 THE COURT: Anybody else have cross?

20 MR. MILLER: I decided not to try to gild
21 the lily.

22 THE COURT: All right. Redirect.

23 MR. LOW: Thank you, Your Honor.

24



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Don Siebentritt - Cross (Friedman)

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1 understanding and that's how it happened.

2 MR. FRIEDMAN: Your Honor, could we have a
3 two-minute break?

4 THE COURT: How much longer do you have?

5 MR. FRIEDMAN: I may not have any
6 additional.

7 MR. LEVY: I have five minutes, ten
8 minutes.

9 MR. MILLER: I am going to have to ask a
10 few questions.

11 MR. GEWERTZ: So am I.

12 THE COURT: We have to end by one. So
13 let's take two minutes.

14 MR. FRIEDMAN: Okay. Thanks.

15 (Recess taken.)

16 MR. FRIEDMAN: Your Honor we are done. We
17 wanted to move in Debtors' 16, 17 act 8.

18 THE COURT: Any objection.

19 MR. LEVY: No objection.

20 THE COURT: All right. They are admitted.

21 (Documents, so offered and received in
22 evidence, were marked Debtors' Exhibits 16, 17, and 18.)

23 MR. MILLER: May I proceed, Your Honor?

24 THE COURT: You may.



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Volume III

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
CORAM HEALTHCARE CORP. and) Case Nos. 00-3299(MFW)
CORAM, INC.,) through 00-3300(MFW)
Debtors.) Jointly Administered

United States Bankruptcy Court
Courtroom No. 2A
844 North King Street
Wilmington, Delaware 19801

December 13, 2001
9:00 a.m.

BEFORE: THE HONORABLE MARY F. WALRATH
United States Bankruptcy Judge

Transcript of Proceedings

WILCOX & FETZER, LTD.
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

1 MR. LEVY: Good morning, Your Honor.
2 Mr. Friedman and I talked about references with respect
3 to closing arguments and so forth. I think the first
4 subject obviously is what Your Honor wishes. We would
5 each like a half hour -- no more -- for closing argument
6 with no written submissions beyond the designations you
7 have.

8 THE COURT: Yes.

9 MR. LEVY: Second, I think the ideal
10 time -- we don't always get the ideal time -- would be
11 next Monday or Tuesday if you have an hour or two to do
12 that.

13 I should add to that, Your Honor, it's
14 really clear, I think, that we will finish all
15 presentation of evidence by one o'clock tomorrow. But
16 I'm not sure -- and I'm just not sure that there's going
17 to be time after the witnesses for closing.

18 THE COURT: Well, currently I have a
19 twelve, two, three, and four tomorrow afternoon. I don't
20 think --

21 MR. LEVY: Mr. Friedman needs to leave at
22 one. So tomorrow doesn't look very good. We have only
23 one witness tomorrow, but who knows.

24 THE COURT: I should later today know how

1 my Monday looks. So I can either let you know before
2 then if I'm aware or at the conclusion or contact your
3 local counsel.

4 MR. MILLER: I hesitate to rise. I have a
5 very important Board meeting Monday morning for a company
6 that's about to file, but I can be available in the
7 afternoon.

8 THE COURT: All right.

9 MR. MILLER: Thank you, Your Honor.

10 MR. LEVY: May we proceed?

11 THE COURT: You may.

12 MR. LEVY: Good. The equity committee will
13 call Mr. Dan Crowley as an adverse witness.

14 DAN CROWLEY,

15 the witness herein, having first been
16 duly sworn on oath, was examined and
17 testified as follows:

18 CROSS-EXAMINATION

19 BY MR. LEVY:

20 Q. Good morning Mr. Crowley.

21 A. Good morning.

22 Q. Mr. Crowley, you understand, don't you, that
23 last December 21st this Court found that the contractual
24 relationship between you and Cerberus constituted an

STAR

Dan Crowley - Cross (Levy)

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1 letter for them, correct?

2 A. Yes.

3 Q. And in that representation letter, you didn't
4 tell Ernst & Young that the Court had found an actual
5 conflict of interest, did you?

6 A. Ernst & Young knew that I had an actual conflict
7 of interest. Basis: the Court finding. They were party
8 to the Court proceedings. They were immediately involved
9 thereafter in the Stark 2 conversion. They had the Court
10 findings in their hand. Ernst & Young was a party to the
11 K, all three Qs, all the financial reporting. At all
12 times Ernst & Young has known about the Court findings,
13 yes. And they are intimately involved in all of those
14 public filings. They knew what the filings said.

15 Q. Equity Committee Exhibit 25, you should have in
16 front of you.

17 MS. MINOR: There are three piles. One is
18 equity.

19 THE WITNESS: Can you help me, please?

20 MS. MINOR: Sure.

21 A. Okay. Yes. I have it in front of me.

22 BY MR. LEVY:

23 Q. Good. Would you look at the page that has the
24 Bates number Coram Equity 18,410 on it third from the

Dan Crowley - Cross (Levy)

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1 A. It has been found so by any number of valuation
2 experts.

3 Q. Okay. So let's stick with total cash. Will you
4 agree -- see if I can do my multiplication -- that the
5 performance based cash compensation for a company that
6 hired in this CEO like you to turn the company around in
7 the case of our first comparable, Hyperion, the
8 compensation you claim is more than 300 percent more than
9 the CEO of Hyperion is reported as receiving. Do you
10 agree with that?

11 A. The numbers that are on this page are on this
12 page. You want to go over each one? I'll do it if
13 that's what you want to do. But my compensation is based
14 on my contract and the performance standards that are in
15 it. I don't know what these contracts are and whether
16 someone has options in a different circumstance in a
17 different company in a different industry. I really
18 can't speak to that compensation. Total compensation is
19 compensation.

20 Q. Well, then, why did you spend 10,000 bucks and
21 ask Mr. Smithson to order this report?

22 MR. FRIEDMAN: Objection. It's been asked
23 and answered.

24 THE COURT: Sustained.

Dan Crowley - Redirect (Friedman)

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1 MR. LEVY: I'm sorry. It's as leading as a
2 question can be.

3 THE COURT: Overruled. Overruled.

4 A. I didn't advise. I did not advise them every
5 month what I was being paid

6 BY MR. FRIEDMAN:

7 Q. You testified in response to Mr. Levy's question
8 that, in November of 1999, when you signed your contract
9 with Coram, that at that time the Directors were not
10 aware that you were getting \$80,000 a month from
11 Cerberus. Do you recall that testimony?

12 A. Yes.

13 Q. At that time were the Directors aware that you
14 had a business relationship with Cerberus?

15 A. Yes. They were aware.

16 Q. Since December of the last year, have the
17 details of your relationship with Cerberus been publicly
18 disclosed?

19 A. Yes.

20 Q. To your knowledge, on how many separate
21 occasions?

22 A. At least five.

23 Q. Can you identify those separate occasions?

24 A. SEC filing for the year ended 2000. It's called

Dan Crowley - Redirect (Friedman)

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1 a 10-K. It's disclosed. There's an SEC filing for the
2 quarters ended March, June, and September. It's called
3 10-Q. It's been publicly disclosed in writing in these
4 documents. And there's a public filing with the
5 confirmation hearing reorganization plan that's been
6 printed and widely distributed in a public document. So
7 at least those five. And then there was the disclosure
8 to the Board in a face-to-face meeting.

9 Q. Since you became the CEO of Coram in November of
10 1999, how much money have you actually received from
11 Coram in compensation?

12 A. I received my base salary. It's paid in
13 every-two-week increments. It's the same base salary.
14 I've not had a raise in two years. I'm paid for my
15 vacation. I'm paid for a car allowance. And I'm paid
16 for temporary living. I never received anything else.
17 Nothing else.

18 Q. What is your base salary?

19 A. 650,000.

20 Q. And just so the record is clear on this, what
21 was your involvement in the development of the current
22 plan of reorganization being considered by the Court?

23 A. I was uninvolves in the development of the plan
24 being considered by the Court. No involvement.

1 Amaral from Dan Crowley.

2 MR. FRIEDMAN: Okay. I have no objection.

3 THE COURT: Okay. They are admitted.

4 (Documents, so offered and received in
5 evidence, were marked Equity Committee Exhibits 40
6 through 45, inclusive.)

7 MR. LEVY: Your Honor, next witness Mr. Low
8 is going to present the witness, Mr. Dan Lynn of
9 Deloitte. I don't know what our timing is. I leave it
10 to you.

11 THE COURT: Well, how long will he be?

12 MR. LOW: Your Honor, I don't know. I
13 would think that the direct would be in the range between
14 half an hour and 40 minutes.

15 MR. FRIEDMAN: Without piling on, I could
16 do it in an hour, cross in an hour. Maybe a little less.
17 If I really want to go through all this stuff, it will
18 take longer.

19 THE COURT: Who do we have tomorrow?

20 MR. LOW: We have Professor Fishell.

21 MR. FRIEDMAN: Then we are done.

22 THE COURT: How long will he be.

23 MR. LEVY: Direct 30 to 45 minutes.

24 MR. FRIEDMAN: We haven't deposed him yet.

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State of Delaware)
)
County of New Castle)

C E R T I F I C A T E

I, Ann M. Calligan, Registered Merit Reporter and Notary Public, do hereby certify that the foregoing record, pages 403 to 530, inclusive, is a true and accurate transcript of my stenographic notes taken on December 13, 2001, in the above-captioned matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 13th day of December, 2001, at Wilmington.

Ann M. Calligan

DEC 14 2001 - December 14, 2001 09:40:00 AM

532:1 VOLUME 4
 2 IN THE UNITED STATES BANKRUPTCY COURT
 3 FOR THE DISTRICT OF DELAWARE
 4 In the matter of)
 5)
 6 CORAM HEALTHCARE CORP.) Case No. 00-3299
 7 and CORAM, INC.) Through 00-3300 (MFH)
 8)
 9 Debtors.)
 10 Bankruptcy Courtroom
 11 Room No. 2 - Sixth Floor
 12 Marine Midland Plaza
 13 824 Market Street Mall
 14 Wilmington, Delaware
 15 Friday, December 14, 2001
 16 9:40 a.m.
 17 BEFORE: THE HONORABLE MARY F. WALRATH,
 18 United States Bankruptcy Judge
 19 TRANSCRIPT OF PROCEEDINGS
 20 WILCOX & FETZER
 21 1330 King Street - Wilmington, Delaware 19801
 22 (302) 655-0477
 23
 24

DEC 14 2001 - December 14, 2001 09:40:00 AM

533:1 MR. LEVY: Your Honor, let me just describe
 2 where we are. Because Professor Fischel would have a
 3 problem coming back next week and because there may be
 4 some doubt as to whether everything can be finished, we
 5 agreed at least to this subject, obviously, to your
 6 approval: That we would begin this morning with the
 7 direct testimony of Professor Fischel and hopefully
 8 finish that, and Mr. Dalin is here if we can do it.
 9 You want to add to that?
 10 MR. FRIEDMAN: Your Honor, we're happy to
 11 try to accommodate Professor Fischel's schedule. The
 12 only point I make is that the deposition yesterday lasted
 13 until 8:00 p.m. and I was supposed to have gotten the
 14 transcript last night. I didn't get it until this
 15 morning. I have been preparing for cross since basically
 16 6 o'clock this morning. I don't feel terribly
 17 comfortable. I will do the best I can. But if we can't
 18 do it I'd like to at least -- if we have some breaks and
 19 I'll do the best I can. Not to the point of prejudicing
 20 the case.
 21 MR. LEVY: We will defer that fight to see
 22 if it occurs.
 23 THE COURT: Okay. Mr. Fischel?

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534:1 DANIEL R. FISCHEL,
 2 the witness herein, having first been
 3 duly sworn on oath, was examined and
 4 testified as follows:
 5
 6 DIRECT EXAMINATION
 7
 8 BY MR. LEVY:
 9 Q. State your full name and spell it.
 10 A. Is it okay if I do some housekeeping up here?
 11 Q. You want to clean up the place?
 12 A. If it's okay. Piles of stuff here.
 13 Ready.
 14 Q. Your name?
 15 A. Daniel Robert Fischel.
 16 MR. LEVY: Your Honor, Mr. Fischel has
 17 before him and you have a copy of a document we have
 18 premarked Equity Committee Exhibit 48. It's the report
 19 of Lexcon and Daniel R. Fischel dated November 13th,
 20 2001, and delivered to all of the parties shortly after
 21 that date.
 22 Q. Let me ask you a few questions about your
 23 credentials.
 24 Exhibit E to your report, is that your

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535:1 current resume?
 2 A. Yes.
 3 Q. Where are you employed?
 4 A. I am employed both at the University of Chicago
 5 and at a consulting firm in Chicago by the name of
 6 Lexcon, Inc.
 7 Q. Your position at the University of Chicago?
 8 A. I am the lee in brena (phonetic) professor of
 9 law and business at the University of Chicago Law School.
 10 Q. Have you had other academic appointments there?
 11 A. Yes, for a while I served as dean of the law
 12 school. I also for a number of years was a professor in
 13 the University of Chicago Graduate School of Business.
 14 And for many years I was director of the law economics
 15 program which is a university-wide program specializing,
 16 as the name suggests, in the relationship between law and
 17 economics.
 18 Q. Do you have time to teach?
 19 A. Yes.
 20 Q. What do you teach?
 21 A. I teach primarily courses in corporations,
 22 corporate finance, and economic analysis of law.
 23 Q. And do any of these courses relate to the issues
 24 that are the subject matter of this case?

Fischel EXHIBIT 7
 FOR ID 10-13-03 14NY

DECEMBER 14, 2001 - December 14, 2001 09:40:00 a.m.

556:1 because of an allegiance to the noteholders as opposed to
 2 an allegiance to the stockholders.
 3 For example, you don't know -- there's no
 4 way to know if there was a productive investment, if
 5 there was a profitable merger, if there was some
 6 value-increasing decision that could have been made but
 7 wasn't, because Mr. Crowley never looked for it, because
 8 he was primarily interested in shrinking the firm and
 9 paying off the noteholders if in fact that's what he was
 10 doing as he clearly had an incentive to do in light of
 11 the conflict of interest.

12 Again, I think in order to even begin to
 13 analyze those issues, you need an objective measure of
 14 performance or an objective analysis of performance, not,
 15 in my opinion, a series of interviews and review of
 16 documents where somebody gives his impressions without
 17 doing the kind of rigorous analysis that's required by
 18 the SEC and is regarded as standard by all recognized
 19 authorities on management performance.

20 Q. Have you analyzed how these comparable companies
 21 perform?

22 A. Yes. I have begun that analysis.

23 Q. What do you mean "begun that analysis"?

24 A. Meaning that what I did was I took the companies

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557:1 that Mr. Goldin considered comparable, which happened to
 2 be the identical companies that Coram itself regarded as
 3 comparable when Coram compared its performance against
 4 these other companies, and I compared Coram's performance
 5 against the performance of these comparable companies
 6 without really having had a chance myself to do any
 7 in-depth analysis of Coram's business practices or look
 8 at its financial records.

9 Q. Let's start with a document which is attached to
 10 the Lexecon report, and we're going to mark as Equity
 11 Committee Exhibit 59 a bar graph entitled, "Percentage
 12 Change in Stock Prices."

13 MR. FRIEDMAN: Why do you need it if it's
 14 in the report? A separate document.

15 MR. LEVY: And attached to that is a chart
 16 that shows the source of the data that led to this bar.

17 MR. FRIEDMAN: Your Honor, again, the chart
 18 is attached to the report. The witness elected not to
 19 attach the data in his report. You can't then introduce
 20 it into evidence.

21 MR. LEVY: Your Honor, the data was
 22 furnished to the debtors after our last go-round. The
 23 data is all publicly available material. It's a method
 24 of providing the foundation for it. This is not a

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558:1 surprise. They have had this for at least two weeks. I
 2 cannot imagine why we wouldn't want verifying data in
 3 here or what kind of real objection there can be to this.
 4 MR. FRIEDMAN: Your Honor, it's just a
 5 question of there is a report. These bar graphs are
 6 attached to the report. Whatever was decided not to be
 7 attached to the report was made for a reason. Whatever
 8 that second page is I have never seen. It may be
 9 perfectly true. I'm not saying it's not true. I have
 10 never seen it. If it's important, it should be in the
 11 report. If it's not important, we shouldn't be wasting
 12 time talking about it now.

13 MR. LEVY: This is truly a no good deed
 14 goes unpunished. I got a complaint after I sent the
 15 report. How do we know? I said I would prepare these.
 16 Mr. Ross prepared them and I mailed them to you.

17 MR. FRIEDMAN: I never saw them.

18 MR. MILLER: We never received them either,
 19 Your Honor.

20 THE COURT: I'm going to allow it, but
 21 again, I have some concerns about lack of disclosure to
 22 the other side. But let's see if we can go ahead.

23 MR. LEVY: In view of that, Your Honor, I'm
 24 going to ask if I can at this point -- excuse me one

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559:1 moment -- introduce my copy of a letter that I sent to
 2 Mr. Movick of Kasowitz with a copy to Mr. Miller and to
 3 Mr. Gewertz, the last paragraph of which said, "We have
 4 also attached each exhibit to assist you in verifying the
 5 accuracy of the calculations contained in the exhibit, a
 6 sheet."

7 THE COURT: Are you testifying now?

8 MR. LEVY: Your Honor --

9 THE COURT: I overruled the objection,

10 didn't I?

11 MR. LEVY: I'm sorry, Your Honor.

12 THE COURT: You may go ahead.

13 MR. LEVY: I was trying to address your
 14 concern, which I think is an unfair attack. But let's go
 15 ahead.

16 BY MR. LEVY:

17 Q. You have Equity Committee 59 in front of you,
 18 sir? I'm sorry. 49.

19 MR. FRIEDMAN: I think we're at least
 20 entitled to a copy.

21 MR. LEVY: You can have mine. Here.

22 THE COURT: I thought they had been passed
 23 out to all counsel.

24 BY MR. LEVY:

DECEMBER 14, 2001 - December 14, 2001 09:40:00 a.m.

564:1 in order for the Goldin report to do a proper analysis of
 2 how Coram performed. But, as I said, there's nothing in
 3 the Goldin report on this subject.

4 Q. Let's move quickly to the other charts that you
 5 used for this purpose. The next one that we marked as
 6 Equity Committee Exhibit 50 is a bar chart demonstrating
 7 revenue growth of Coram and the four comparables.

8 A. Would you like me to explain --

9 Q. I'm sorry?

10 A. I have it. Would you like me to explain --

11 Q. Yes, sir.

12 A. This is a similar chart but this time comparing
 13 revenue growth for Coram and the four comparable
 14 companies, and, again, because of the availability of
 15 data at the time this graph was compiled, it goes from
 16 year-end 1999 to year-end 2000. Subsequently we extended
 17 this graph just a check to the current time period and
 18 nothing in terms of the qualitative nature of the results
 19 changes.

20 But what it shows is during this period all
 21 four of the comparable companies increased in size. Most
 22 dramatically being Option Care again, the company that is
 23 the most comparable to Coram according to Mr. Goldin
 24 which increased in size by -- increased in revenues by

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565:1 17.3 percent, while Coram decreased by 10.8 percent.

2 Again, as I said with the stock price
 3 exhibit, there may be many reasons for this and they may
 4 even be innocent reasons, but, at a minimum, there would
 5 be a need for Mr. Goldin to describe and analyze why it
 6 was that the other companies that he himself concluded
 7 were comparable and Coram itself concluded were
 8 comparable and particularly the company that he decided
 9 was the most comparable was going so much in a different
 10 direction than Coram was and whether any of the
 11 opportunities and the reasons why these other companies
 12 were growing, why those reasons and opportunities existed
 13 for the other companies but didn't exist for Coram.

14 Again, I'm not suggesting that there's no
 15 explanation, but the Coram report doesn't discuss the
 16 issue and doesn't provide an explanation. And to the
 17 extent there is a discussion of issues that are related
 18 such as the sale of CPS, which is one of the reasons why
 19 Coram's revenues decreased, and the explanation given by
 20 Mr. Goldin for that sale, in my opinion, not
 21 persuasive --

22 Q. Let's stick with this chart. Let's go --

23 MR. MILLER: Before you ask a question, you
 24 haven't given me a copy. I was looking at inventory

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566:1 turnover, Exhibit B. You're apparently working with some
 2 other exhibit.

3 THE COURT: Please provide all the copies.

4 MR. LEVY: You have copies. Didn't I give
 5 you a copy?

6 MR. FRIEDMAN: Yes.

7 MR. LEVY: I apologize.

8 MR. MILLER: I'm sorry. I didn't want to
 9 interrupt the witness in the middle of a question.

10 THE COURT: All right.

11 MR. GEWERTZ: Skip from A to D; is that
 12 correct?

13 BY MR. LEVY:

14 Q. Next is we marked Equity Committee Exhibit 51,
 15 change in inventory turnover. Can you describe this
 16 exhibit and why it's relevant?

17 A. This is relevant because Mr. Goldin in his
 18 report made a statement that Mr. Crowley improved
 19 inventory turnover, and what I did was basically just
 20 look, again, using the same methodology of what happened
 21 with comparable companies in order to put that statement
 22 in context, and what the graph shows, again, being
 23 somewhat brief because it's basically the same pattern as
 24 the other graphs, is that on this particular issue

DECEMBER 14, 2001 - December 14, 2001 09:40:00 a.m.

567:1 Coram's performance was somewhere in the middle of the
 2 pack. Looks like exactly in the middle of the pack. It
 3 was a company that performed better than American Home
 4 Patient and Apria. Coram was slightly worse than Gentiva
 5 and significantly less good than Option Care.

6 So, again, I think it's just important to
 7 put what happened with inventory in context, looking at
 8 comparable companies, although I would also say that this
 9 is a much less important measure of performance
 10 generally, obviously, than stock price performance.

11 Q. And you're not suggesting that the conflict
 12 caused Coram to only reach the middle of the pack?

13 A. No, I'm not. Basically what I said before, that
 14 in order to analyze performance, you need to look at what
 15 happens with comparable companies.

16 Q. And quickly, through change in date of sales
 17 outstanding which is a measure of accounts outstanding
 18 marked as No. 52.

19 A. Right. This is exactly the same methodology.
 20 This is, again, a measure that Mr. Goldin mentioned, so I
 21 performed the same analysis and this is the measure of
 22 the measures that I looked at that Mr. Goldin mentioned
 23 where Coram did the best. It was at least during this
 24 period the second most successful firm in reducing

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
CORAM HEALTHCARE CORP. and) Case No. 00-3299
CORAM, INC.,) through 00-3300
Debtors.) (MFW)

Bankruptcy Courtroom
No. 1, Sixth Floor
Marine Midland Plaza
824 Market Street
Wilmington, Delaware

Monday, December 17, 2001
4:20 p.m.

BEFORE: THE HONORABLE MARY F. WALRATH,
United States Bankruptcy Judge

-- Transcript of Proceedings --

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1 THE COURT: Good afternoon.

2 MR. LAW: Good afternoon, Your Honor.

3 I think the state of the proceedings is we
4 are ready for the finalization of Mr. Lynn's examination.
5 Then we'll proceed from there.

6 MR. FRIEDMAN: Okay.

7 MR. LAW: Again, Your Honor, let me offer
8 into evidence Exhibit 47, EC-47, which Mr. Lynn testified
9 is a chart that Deloitte & Touche prepared. It's really
10 a demonstrative. It's identical to a chart that UBS
11 prepared. It has the same information and is supplied by
12 the same --

13 MR. FRIEDMAN: Your Honor, we don't object.

14 THE COURT: All right. It's admitted.

15 (EC Exhibit 47 was admitted into evidence.)

16 MR. LAW: Your Honor, in the interest of
17 time, we'll pass the witness at this point.

18 THE COURT: All right.

19 MR. FRIEDMAN: Your Honor, we understand
20 that we need to get this done within half an hour and
21 we'll do that.

22 THE COURT: Thank you.

Lynn - Redirect

695

1 fair market value today.

2 Q. Your report does contain in it five months of
3 actual financial information in 2001; correct?

4 A. Yes, it does.

5 Q. It's in your report, isn't it?

6 A. Yes, it does.

7 Q. Okay.

8 MR. FRIEDMAN: Thank you, Your Honor.

9 MR. MILLER: Nothing.

10 THE COURT: Any redirect?

11 MR. LAW: Very brief, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. LAW:

14 Q. Mr. Friedman showed you the bottom of page 23 of
15 your deposition. If you could turn to the top of page 24
16 beginning at line 2 through line 20, were you asked those
17 questions and did you give those answers?

18 A. Your page, again? Sorry.

19 Q. Page 24. Right after where Mr. Friedman left
20 off.

21 A. Yes.

22 Q. What did you base your opinion of sustainability
23 on? Not your opinion, your assumption. I'm sorry. I
24 made a very key mistake. Your assumption of



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1 two answers given last year by Mr. Crowley and Mr. Danitz
2 that I think --

3 THE COURT: Do you want to do that like the
4 designations?

5 MR. LEVY: Yes.

6 THE COURT: Any objection to that?

7 MR. FRIEDMAN: Not if it's done that way.
8 I would want to respond.

9 THE COURT: All right.

10 MR. LEVY: I'm sorry. Is Your Honor
11 suggesting I do it right now? It is just real, real
12 brief.

13 THE COURT: I was going to suggest that you
14 do it as you did the depositions.

15 MR. LEVY: In writing to you?

16 THE COURT: You can hand them up and the
17 debtor can respond.

18 MR. LEVY: Okay. May I refer to them in my
19 closing?

20 THE COURT: Yes.

21 MR. LEVY: Okay. That's fine.

22 Second, Your Honor, and last, there was a
23 stipulation entered into with respect to interview notes
24 taken by Mr. Goldin. The notes are identified. It says



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1 the debtors will not object to the admissibility into
2 evidence at the hearing to consider confirmation of the
3 second plan of the documents for the purpose of
4 establishing that notes of interviews were taken in the
5 form represented by the documents.

6 The debtors reserve the right to object to
7 the admissibility of the documents for any other purpose
8 including but not limited to admissibility for the truth
9 of any statement therein or on the grounds of relevance.
10 In other words, we established foundation without having
11 to take depositions to establish that.

12 I would now like to move them into
13 evidence. I don't think it is worth going through each
14 one for relevance. I wonder if they can go in and we can
15 argue weight.

16 MS. MINOR: Your Honor, in terms of the
17 designations, they were included in our designations. Do
18 you want us to enter the depositions and documents as
19 exhibits or -- I'm confused just in terms of the comments
20 you made earlier. Last year they were entered, given
21 exhibit numbers and entered into the record as exhibits.
22 Would you prefer we not do that this time?

23 THE COURT: I don't care. Do the parties
24 have any --



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1 the sale of CPS associated with that."

2 Your Honor, I think I've said all I'm going
3 to say. Thank you.

4 THE COURT: Thank you.

5 Well, given the hour, I will issue a
6 decision, but not now. So I appreciate the parties'
7 indulgence.

8 MR. LEVY: I hope this is profitable. It's
9 been a wonderful experience here.

10 THE COURT: R-Net had a settlement?

11 MR. FRIEDMAN: Could I ask you one
12 question? This is just for our planning. Do you know
13 when you'll be getting a decision out?

14 THE COURT: I hope this week, but don't
15 hold me to it.

16 MR. LEVY: Thank you.

17 (UNIDENTIFIED SPEAKER): Your Honor, I've
18 lost my voice.

19 THE COURT: Can somebody else report your
20 settlement?

21 (UNIDENTIFIED SPEAKER): I'm hoping --

22 MR. SHUFF: Your Honor, I'll try to be very
23 brief. Mr. Adam Shiff of Kasowitz, Benson, Torres &
24 Friedman on behalf of the debtor.



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1
2 UNITED STATES BANKRUPTCY COURT
3 DISTRICT OF DELAWARE

COPY

4
5 In Re)
6 Coram Healthcare Corp.)
7 and Coram, Inc.,)
8 Debtors,)
9 _____)

Chapter 11 Case Nos.
00-3299 (MFW) through
00-3300 (MFW)

10
11
12
13 Deposition of
14 WILLIAM CASEY
15 Friday, September 28, 2001
16
17
18
19
20
21
22
23

Reported by:
24 CARRIE STOTTELMAYER, RPR, CM, CRR
CSR No. 4373
25 Job No. 79613

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CH-11 TRUSTEE/
CrowleyAdmin002304

1 BY MR. LEVY:
2 Q Whatever "investigation" means to you,
3 Mr. Casey. You're smart.
4 MR. HARWOOD: Object to the form.
5 THE WITNESS: I didn't call the police, I
6 didn't call the FBI.
7 BY MR. LEVY:
8 Q Did you call Mr. Crowley and say -- and ask
9 him?
10 A I talked to Mr. Crowley frequently, yes.
11 Q Did you call Mr. Crowley and ask him about how
12 much he was making -- how much he was being paid,
13 rather, by Cerberus?
14 MR. HARWOOD: Object to the form.
15 THE WITNESS: No.
16 BY MR. LEVY:
17 Q Ever?
18 A He told me.
19 MR. HARWOOD: Object to the form.
20 BY MR. LEVY:
21 Q Excuse me?
22 A I didn't have to call and ask him. He told me.
23 Q When did he tell you?
24 A After it became an issue.
25 Q When it -- it became an issue, I take it, on

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CH-11 TRUSTEE/
CrowleyAdmin002352

1 December 21st when the judge refused to confirm the
2 plan?

3 MR. HARWOOD: Object to the form.

4 BY MR. LEVY:

5 Q How much after December 21st did Mr. Crowley
6 tell you how much he was given?

7 A I guess I don't understand. How much later?

8 Q Yes. How much later?

9 A Shortly thereafter. Within hours, days. I
10 don't know.

11 Q And tell me who was present in this
12 conversation you had with Crowley.

13 A It could have been he and I, it could have been
14 he and I and other members of the board.

15 Q Do you have any recollection?

16 A As I say, we meet and confer --

17 Q Do you have any recollection?

18 MR. HARWOOD: Objection. Let the witness
19 answer the question.

20 THE WITNESS: I don't know the first time he
21 told me.

22 BY MR. LEVY:

23 Q Could it have been as long as six months later?

24 A I don't believe so.

25 Q Were you surprised at the amount?

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CrowleyAdmin002353

1 MR. CUNNINGHAM: Objection.

2 THE WITNESS: What amount?

3 BY MR. LEVY:

4 Q The amount of money that Cerberus was paying
5 Crowley.

6 A It's a very substantial amount.

7 Q How much was it? Do you recall?

8 A 80,000 a month.

9 Q Did you ask Crowley what he was doing for that
10 80,000 a month?

11 A I believe he told us what he was doing.

12 Q What did he tell you?

13 A He has a company in Sacramento, and he provides
14 healthcare consulting to Cerberus when they have issues
15 in the healthcare sector of their business.

16 Q Did he tell you how much time he was spending
17 for that 80,000 a month?

18 A I knew that he was spending full-time on Coram,
19 so I wasn't real interested in how much time he was
20 spending on that.

21 Q Because it was pretty clear to you if he was
22 spending full-time on Coram, couldn't have been spending
23 any time on that, correct?

24 MR. HARWOOD: Object to the form.

25 THE WITNESS: Well, as an attorney, I'm sure

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CrowleyAdmin002354

1 could have simply added that interest to the note
2 without using cash?

3 A Yes:

4 Q Are you aware that Mr. Goldin's report
5 concludes that that was an imprudent thing to do?

6 MR. HARWOOD: Object to the form.

7 THE WITNESS: Mr. Goldin said that in a
8 bankruptcy situation it's very prudent to -- and I think
9 the term he used was "husband your cash," okay, and I
10 don't disagree with what he said. That's not true --

11 BY MR. LEVY:

12 Q Keep going.

13 A In this particular instance, he felt it would
14 be -- since we would be renegotiating a DIP line of
15 credit, debtor in possession line of credit, that it
16 would be to our advantage to enter this situation in as
17 favorable a light as we could; therefore, we made the
18 payment.

19 Q You approved the payment as a director?

20 A I don't remember approving it specifically, but
21 we did review what happened and we did concur.

22 Q Isn't it a fact that the Goldin report says it
23 was an imprudent thing to do?

24 MR. HARWOOD: Object to the form.

25 THE WITNESS: I believe I just answered that.

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CrowleyAdmin002443

1. | imprudent?

2 MR. HARWOOD: Object to the form.

3 MR. CUNNINGHAM: I'd note that there's an
4 extended discussion elsewhere in the report.

5 MR. HARWOOD: Exactly.

6 THE WITNESS: There is an extended discussion
7 elsewhere in the report, and as I said before, it's a
8 judgment call. Mr. Goldman (sic) does in fact say what
9 he said. My feeling as a manager, as a board member is
10 that what we did is we made that payment to maintain our
11 relationship with the debt because we were going to have
12 to negotiate new lines of credit and we felt it was
13 prudent to do it. There's a disagreement. I believe
14 that he's entitled to his and we're entitled to ours.

15 BY MR. LEVY:

16 Q Generally speaking, did you find yourself
17 relying on Goldin and the Goldin report?

18 MR. CUNNINGHAM: Objection.

19 THE WITNESS: I don't understand the question.

20 BY MR. LEVY:

21 Q Did the directors of Coram rely on the Goldin
22 report in making their decision to file the second
23 amended plan?

24 A As it states in the second amended plan, the
25 special committee of the board endorsed the Goldin plan

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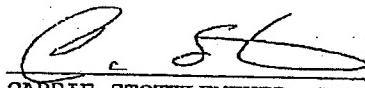
5 I, the undersigned, a Certified Shorthand Reporter,
6 of the State of California, do hereby certify:

7 That the foregoing proceedings were taken before me
8 at the time and place herein set forth; that any
9 witnesses in the foregoing proceedings, prior to
10 testifying, were placed under oath; that a verbatim
11 record of the proceedings was made by me using machine
12 shorthand which was thereafter transcribed under my
13 direction; further, that the foregoing is an accurate
transcription thereof.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed my
18 name.

19
20 Dated: Oct. 1, 2001

21
22 
23 CARRIE STOTTELMAYER, RMR, CRR
CSR No. 4373
24
25

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CrowleyAdmin002463

UNITED STATES BANKRUPTCY COURT

DISTRICT OF DELAWARE

In Re)
Coram Healthcare Corp.)
and Coram, Inc.,)
Debtors,) Chapter 11 Case Nos.
) 00-3299 (MFW) through
) 00-3300 (MFW)
)

CERTIFIED COPY

Deposition of

DANIEL D. CROWLEY

Thursday, October 25, 2001

Reported by:
CARRIE STOTTELMAYER, RPR, CM, CRR
CSR No. 4373
Job No. 80965

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1 of interest and it's an actual conflict of interest."

2 A Be speculative on my part as to what the judge
3 is thinking. Are you wishing me to speculate?

4 Q That's a good answer. Have you ever discussed
5 with anyone what she meant when she said that there was
6 an actual conflict of interest?

7 MR. FELDMAN: You can answer that for anyone
8 other than your lawyers.

9 BY MR. LEVY:

10 Q Well, no. If you discussed it with your
11 lawyer, you can tell me you discussed it with your
12 lawyer. I'm not going to ask what was discussed, okay.

13 MR. FELDMAN: You can answer it yes or no.

14 THE WITNESS: Yes.

15 BY MR. LEVY:

16 Q Have you ever discussed that with anyone other
17 than your lawyer?

18 A No.

19 Q Have you ever discussed that with any member of
20 the board of directors of Coram?

21 MR. FELDMAN: The meaning of those words?

22 BY MR. LEVY:

23 Q The meaning of those words.

24 A No.

25 Q Have you ever discussed with any member of the

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12

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1 board of directors of Coram the question of whether your
2 relationship with Cerberus was an actual conflict of
3 interest?

4 A Would you ask that again?

5 MR. FELDMAN: I'm sorry, I'm getting
6 distracted. I don't mean to be difficult, but all the
7 movement and the stuff -- if we need to break for you to
8 hook up your gear, I'm happy to do that, but it's hard
9 to focus when there's a lot of mechanical stuff going
10 on.

11 MR. LEVY: Let's hold it a second.

12 (Recess taken.)

13 MR. LEVY: Why don't you read the last question
14 then.

15 (Record read.)

16 THE WITNESS: Yes.

17 BY MR. LEVY:

18 Q With which members of the board of directors of
19 Coram have you discussed that?

20 A The full board.

21 Q When was the first time you had such a
22 discussion?

23 A I don't recall the exact date.

24 Q Approximate date.

25 A Couple days after this. December 21st.

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CrowleyAdmin002728

13

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1 Q And was that at a formal meeting of the board?

2 A I don't recall. I think so.

3 Q What did you say and what did the members of
4 the board respond on that subject to the best of your
5 recollection? Just give me the substance.

6 A That I had run the company for the company
7 very, very well and that I believe that I saved the
8 company from rather certain extinction and that I had
9 earned the respect in the company outside the company
10 from every conceivable constituency and that I had
11 complete respect for the judge's decision and understood
12 how she may have been uncomfortable by the relationship
13 between Cerberus and myself but that my duties for
14 Cerberus and my relationship with Cerberus had nothing
15 to do with Coram and that I was disappointed in the
16 outcome, that I believed that the board members knew of
17 my relationship with Cerberus, and I discussed again
18 that I was being paid 80,000 dollars a month to provide
19 services to Cerberus, that would continue, and that the
20 duties at Cerberus had no impact on my activities at
21 Coram and that there was no conflict in that Cerberus
22 had never asked me to do anything at Coram; that's the
23 substance of it, and the board's substance in response
24 was that their feeling was I had conducted myself above
25 and beyond, that I had never acted other than in Coram's

14

1 best interests and that they and I wished that I had
2 simply given them my contract and disclosed the amount
3 of pay with Cerberus because it would have provided
4 Judge Walrath with ostensibly more comfort.

5 Q Anything else you recall from that meeting?

6 A No.

7 Q Now you said, I believe, at the beginning of
8 that answer that you had earned the respect of every
9 conceivable constituency; is that right? I don't recall
10 those exact words, but it's in the transcript. In
11 substance?

12 A Yes.

13 Q Do you believe you earned the respect of the
14 equity holders as a result of your conduct?

15 MR. FELDMAN: Mischaracterizes the testimony.

16 BY MR. LEVY:

17 Q Do you believe that the equity holders are a
18 constituency?

19 A Yes.

20 Q Do you believe you earned their respect?

21 A I believe that the equity holders respect the
22 work that I did and have done at Coram and the results
23 that I have achieved at Coram and are disappointed that
24 Coram's insolvent, and I believe they respect the work.

25 Q What is the basis of your belief that they

15

REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition,

DANIEL D. CROWLEY,

was by me duly sworn to testify in the within-entitled cause; that said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a duly Certified Shorthand Reporter of the State of California authorized to administer oaths and affirmations, and said testimony was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand this 3 day of 3, 2001.


CARRIE STOTTELMAYER
Certified Shorthand Reporter
Certificate No. 4373

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In The Matter Of:

In Re: Coram Healthcare - Chapter 11

Hon. Arlin Adams

January 21, 2004

Brusilow & Associates

1926 Arch Street

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Philadelphia, PA 19103-1404

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CH-11 TRUSTEE/
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In Re: Coram Healthcare - Chapter 11

Hon. Arlin Adams
January 23, 2004

[1]	Page 1	Page 2
[2] IN THE UNITED STATES BANKRUPTCY COURT		
[3] FOR THE DISTRICT OF DELAWARE		
[4]		
[5] In re: : Chapter 11		
[6] [5] CORAM HEALTHCARE CORP.: : Case NO. 00-3299		
	Debtors :	
[7]		
[8]		
[9] Wednesday, January 21, 2004		
[10]		
[11] Continued pretrial examination of		
[12] HON. ARLIN ADAMS, held in the offices of		
[13] Schnader, Harrison, Segal & Lewis, 32nd		
[14] Floor, Philadelphia, PA 19103, commencing		
[15] at 11:02 a.m., on the above date, before		
[16] Mickey Ditter, Registered Professional		
[17] Reporter and Commissioner of Deeds for the		
[18] Commonwealth of Pennsylvania.		
[19]		
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		[24]

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CrowleyAdmin001616

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(3) Page 1 - Page 2

Hon. Arlin Adams
January 21, 2004

In Re: Coram Healthcare - Chapter 11

[1] the benefits of the directors and officers
[2] liability insurance, correct?
[3] A: That's right.
[4] Q: Do you have any notion as to the
[5] value of those claims to the equity
[6] holders that purport to be assigned under
[7] this plan modification?
[8] A: I really don't have an idea of the
[9] value. The problem in the claim against
[10] Dan Crowley is, again, damages. I think
[11] it would be hard-pressed, we would be
[12] hard-pressed if we were asserting the
[13] claim to establish damages, even though
[14] there is a finding by Judge Walrath
[15] against Dan Crowley because I think there
[16] will be some difficulty in establishing
[17] that whatever he did was deleterious to
[18] the financial well-being of Coram.
[19] Q: You never retained or authorized
[20] the retention of a damage expert to
[21] analyze the potential damage claims
[22] against Dan Crowley, did you?
[23] A: We did not because, there, again,
[24] it's premature. We didn't want to do that

Page 11

Page 13

[1] understand that?
[2] A: Settlement of the PriceWaterhouse?
[3] Q: Or Crowley or anything assigned
[4] under the plan modification.
[5] A: That is correct. I think we have
[6] to.
[7] Q: If the equity holders are to
[8] receive the benefit of any of this
[9] litigation or settlement, why is it
[10] important that you, rather than the Equity
[11] Committee, retain this control?
[12] A: I think we have to do it.
[13] Q: What is the basis?
[14] A: The claim is ours. We can enlist
[15] your help in asserting the claim. It
[16] would have to be done by the Trustee.
[17] That's my understanding.
[18] Q: Is that the only reason, it's your
[19] belief that as a matter of law you could
[20] not give control of that to, say, a
[21] litigation trust?
[22] MR. BRESSLER: Objection to
[23] the form of the question.
[24] THE WITNESS: That was my

Page 12

Page 14

[1] at this early stage until we knew where we
[2] were going. We had to do it in the
[3] PriceWaterhouse because we couldn't talk
[4] to the other side without doing it.
[5] Q: Why do you believe it's premature,
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Hon. Arlin Adams
January 21, 2004

In Re: Coram Healthcare - Chapter 11

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Page 67

Page 69

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CH-11 TRUSTEE
CrowleyAdmin001633

In The Matter Of:

In Re: Coram Healthcare - Chapter 11

Hon. Arlin Adams

January 21, 2004

*Brusilow & Associates
1926 Arch Street
1st Floor West
Philadelphia, PA 19103-1404
(215) 977-9700 FAX: (215) 977-9773*

*Original File ADAM0121.TXT, 73 Pages
Min-U-Script® File ID: 0059159295*

Word Index included with this Min-U-Script®

CH-11 TRUSTEE/
Crowley/Admin001615

In Re: Coram Healthcare - Chapter 11

Hon. Arlin Adams
January 21, 2004

Page 1	Page 2
[1]	[1] APPEARANCES:
[2] IN THE UNITED STATES BANKRUPTCY COURT	[2] JENNER & BLOCK
[3] FOR THE DISTRICT OF DELAWARE	BY: RICHARD LEVY, ESQUIRE
[4]	[3] STEVE TOMASHEFSKY, ESQUIRE
In re:	One IBM Plaza
[5] CORAM HEALTHCARE CORP.: Chapter 11	[4] Chicago, IL 60611
and CORAM, INC.	312-222-9350
[6]	[5] rlevy@jennner.com
Debtors	Counsel for the Equity Committee
[7]	[6]
[8]	[7]
[9] Wednesday, January 21, 2004	SCHULTE, ROTH & ZABEL, LLP (By telephone)
[10]	[8] BY: HOWARD GODNICK, ESQUIRE
[11]	919 Third Avenue
Continued pretrial examination of	[9] New York, New York 10022
[12]	212-756-2000
HON. ARLIN ADAMS, held in the offices of	[10] howard.godnick@srz.com
[13]	Counsel for Cerberus Partners, L.P.
Schnader, Harrison, Segal & Lewis, 32nd	[11]
[14]	[12]
Floor, Philadelphia, PA 19103, commencing	SCHNADER, HARRISON, SEGAL & LEWIS
[15]	[13] BY: BARRY BRESSLER, ESQUIRE
at 11:02 a.m., on the above date, before	1600 Market Street
[16]	[14] Philadelphia, PA 19103
Mickey Diner, Registered Professional	215-751-2336
[17]	[15] bbressler@schnader.com
Reporter and Commissioner of Deeds for the	Counsel for the Trustee
[18]	[16]
Commonwealth of Pennsylvania.	[17] WEIL, GOTSHAL & MANGES LLP (By telephone)
[19]	BY: JOHN A. NEUWIRTH, ESQUIRE
[20]	[18] 767 Fifth Avenue
BRUSILOW & ASSOCIATES	New York, New York 10153-0119
[21] COURT REPORTERS & VIDEOGRAPHERS	[19] 212-310-8722
1920 Arch Street • 1st Floor West	john.neuwirth@weil.com
[22] Philadelphia, PA 19103-1404	[20] Counsel for Goldman Sachs, Credit Partners,
215.977.9700	L.P., Foothill Capital Corporation
[23] www.brusilow.com	[21]
[24]	[22]
	[23]
	[24]
	CH-11 TRUSTEE/ CrowleyAdmin001616

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(3) Page 1 - Page 2

Hon. Arlin Adams
January 21, 2004

In Re: Coram Healthcare - Chapter 11

[1] the benefits of the directors and officers
[2] liability insurance, correct?
[3] A: That's right.
[4] Q: Do you have any notion as to the
[5] value of those claims to the equity
[6] holders that purport to be assigned under
[7] this plan modification?
[8] A: I really don't have an idea of the
[9] value. The problem in the claim against
[10] Dan Crowley is, again, damages. I think
[11] it would be hard-pressed, we would be
[12] hard-pressed if we were asserting the
[13] claim to establish damages, even though
[14] there is a finding by Judge Walrath
[15] against Dan Crowley because I think there
[16] will be some difficulty in establishing
[17] that whatever he did was deleterious to
[18] the financial well-being of Coram.
[19] Q: You never retained or authorized
[20] the retention of a damage expert to
[21] analyze the potential damage claims
[22] against Dan Crowley, did you?
[23] A: We did not because, there, again,
[24] it's premature. We didn't want to do that

Page 11

Page 13

[1] understand that?
[2] A: Settlement of the PriceWaterhouse?
[3] Q: Or Crowley or anything assigned
[4] under the plan modification.
[5] A: That is correct. I think we have
[6] to.
[7] Q: If the equity holders are to
[8] receive the benefit of any of this
[9] litigation or settlement, why is it
[10] important that you, rather than the Equity
[11] Committee, retain this control?
[12] A: I think we have to do it.
[13] Q: What is the basis?
[14] A: The claim is ours. We can enlist
[15] your help in asserting the claim. It
[16] would have to be done by the Trustee.
[17] That's my understanding.
[18] Q: Is that the only reason, it's your
[19] belief that as a matter of law you could
[20] not give control of that to, say, a
[21] litigation trust?
[22] MR. BRESSLER: Objection to
[23] the form of the question.
[24] THE WITNESS: That was my

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Page 14

[1] at this early stage until we knew where we
[2] were going. We had to do it in the
[3] PriceWaterhouse because we couldn't talk
[4] to the other side without doing it.
[5] Q: Why do you believe it's premature,
[6] judge?
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CH-11 TRUSTEE
CrowleyAdmin001633

Feinberg, Stephen

2/14/2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

Certified Copy

ARLIN M. ADAMS, Chapter II)
Trustee of the Post-) Case No.
Confirmation Bankruptcy of) 04-1565
Estates of CORAM HEALTHCARE)
CORPORATION, and of CORAM,)
INC., a Delaware corporation,))
Plaintiff,)
vs.)
DANIEL D. CROWLEY, DONALD J.)
AMARAL; WILLIAM J. CASEY; L.)
PETER SMITH; and SANDRA L.)
SMOLEY,)
Defendants.)
-----)

Wednesday, February 14, 2007
10:29 a.m.

Deposition of STEPHEN FEINBERG,
held at the offices of Cerberus
Capital Management, L.P., 200 Park
Avenue, New York, New York 10171,
pursuant to Notice, before Otis Davis,
a Notary Public of the State of New
York.

Feinberg, Stephen

2/14/2007

1 Stephen Feinberg
2 done a Consulting Agreement, which is what
3 we should have done here. But I wasn't
4 involved with this. He takes care of the
5 agreements and a mistake was made.

6 Q. What was your understanding in
7 November 1999 of the form of the
8 relationship between Cerberus and Dan
9 Crowley, putting aside Coram?

10 A. That he would consult with us
11 and work on companies, on companies we
12 would bring to him if he wanted to, and he
13 would give us advice or more. For that, he
14 received compensation, a yearly salary, and
15 upside on deals that we did that he
16 recommended.

17 Q. It says in paragraph 3.1 under
18 "Basic Compensation" that he would receive
19 a salary of \$80,000 a month.

20 Was he receiving that salary
21 for work on Coram or for work on other
22 projects with Cerberus?

23 A. For work on other projects with
24 Cerberus.

25 Q. How was that number of \$80,000

264

1
2 C E R T I F I C A T E
3

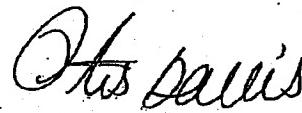
4 STATE OF NEW YORK)
5 : ss.
6
7 COUNTY OF NEW YORK)
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I, OTIS DAVIS, a Notary Public
within and for the State of New York,
do hereby certify:

That STEPHEN FEINBERG, the
witness whose deposition is
hereinbefore set forth, was duly sworn
by me and that such deposition is a
true record of the testimony given by
the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 16th day of February 2007.



OTIS DAVIS

Crowley, Daniel D.

4/6/2007

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, Chapter 11
Trustee of the Post-Confirmation
Bankruptcy Estates of CORAM
HEALTHCARE CORPORATION, a Delaware
Corporation, and of CORAM, INC.,
a Delaware Corporation,

Certified Copy

Plaintiff,

CASE NO. 04-1565

vs.

DANIEL D. CROWLEY; DONALD
J. AMARAL; WILLIAM J. CASEY;
L. PETER SMITH; and SANDRA
L. SMOLEY,

Defendants.

---oo---

VIDEOTAPED DEPOSITION OF DANIEL D. CROWLEY

Friday, April 6, 2007

---oo---

SHEILA CHASE & ASSOCIATES
REPORTING FOR:
LiveNote World Service
221 Main Street, Suite 1250
San Francisco, California 94105
Phone: (415) 321-2300
Fax: (415) 321-2301

Reported by:

LORRIE L. MARCHANT, CSR, RPR, CRR, CLR
CSR No. 10523

Crowley, Daniel D.

4/6/2007

1 BY MR. BARKASY: Q. No, not for the moment.
2 Mr. Crowley, I just want to close the loop.
3 As of August 8, 2000, you didn't tell
4 Scott Danis that you were receiving \$80,000 a month from
5 Cerberus, did you?

6 MR. SLAUGHTER: Object to the form.

7 THE WITNESS: I may have. I don't recall it.

8 BY MR. BARKASY: Q. You testified at the
9 confirmation hearing on Coram's first plan of
10 reorganization; correct?

11 A. You asked me that before, and I said I did.

12 Q. And you were represented by Phil Warden, of the
13 Pillsbury firm, during the confirmation hearing; is that
14 correct?

15 MR. SLAUGHTER: Object to the form. Calls for
16 a legal conclusion. Lacks foundation.

17 THE WITNESS: I don't recall that I was
18 represented by Pillsbury at the confirmation hearing. I
19 think it was subsequent.

20 BY MR. BARKASY: Q. Mr. Crowley, I would like
21 to refer to Exhibit Crowley 19.

22 A. Give me a second.

23 Q. Sure. And I'd like you to look at the very
24 last page of Crowley 19.

25 A. This (indicating)?

Crowley, Daniel D.

4/6/2007

1 Q. Yeah.

2 A. Okay.

3 Q. The last page of Crowley 19 is the court
4 sign-in sheet for the hearing held in Coram on
5 December 15, 2000. And if you look at the last name, it
6 says Phillip Warden; Pillsbury, Madison & Sutro; D.
7 Crowley.

8 Do you see that?

9 A. Yes.

10 Q. Does that refresh your memory as to whether
11 Mr. Warden was representing you at the confirmation
12 hearing held in December of 2000?

13 MR. SLAUGHTER: Objection to the form of the
14 form of the question. Lacks foundation.

15 THE WITNESS: No. As I sit here, it doesn't
16 refresh my recollection.

17 I will say that at some point, Phil Warden
18 represented me in a deposition. As to that
19 representation at this date on this matter, I just don't
20 recall that.

21 BY MR. BARKASY: Q. Okay. Mr. Warden flew to
22 Wilmington with you, on a chartered jet, on December 14,
23 2000, with Mr. Davis.

24 Do you remember that?

25 A. I have a recollection of being told I had to be

Crowley, Daniel D.

4/6/2007

1 And then he's writing a 165-page report telling
2 me you saved the company. So -- that's a pretty tough
3 situation for me.

4 MR. BARKASY: Let me mark this as I think what
5 will be the last exhibit.

6 (Marked for identification purposes,
7 Exhibit 43.)

8 BY MR. BARKASY: Q. Mr. Crowley, Exhibit -- is
9 Exhibit Crowley 43 a schedule of attorneys' fees
10 incurred by Dynamic related to the Coram bankruptcy?

11 MR. SLAUGHTER: Objection. Lacks foundation.

12 You can testify if you know what it is. If you
13 don't -- you can tell him what it is if you know. If
14 you don't know ...

15 THE WITNESS: Well, I haven't seen this before
16 you just handed it to me, and it says, Attorney fees
17 incurred by DPH related to Coram bankruptcy. But as I
18 sit here and look at this, I don't have a recollection.

19 BY MR. BARKASY: Q. This was --

20 MR. SLAUGHTER: I think we're -- Counsel, I
21 think we're -- our video operator can tell us what the
22 time is, but I think we're up on our time.

23 THE VIDEOGRAPHER: Yeah, we are.

24 MR. SLAUGHTER: Okay.

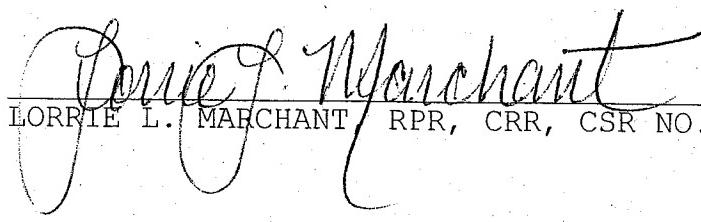
25 MR. BARKASY: Well, I have one more question.

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, LORRIE L. MARCHANT, RPR, CRR, CSR NO. 10523,
3 duly authorized to administer oaths pursuant to Section
4 8211 of the California Code of Civil Procedure, hereby
5 certify that the witness in the foregoing deposition
6 was by me sworn to testify to the truth, the whole truth
7 and nothing but the truth in the within-entitled cause;
8 that said deposition was taken at the time and place
9 therein stated; that the testimony of said witness was
10 reported by me and was thereafter transcribed by me or
11 under my direction by means of computer-aided
12 transcription; that the foregoing is a full, complete
13 and true record of said testimony; and that the witness
14 was given an opportunity to read and correct said
15 deposition and to subscribe same.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing deposition and caption named, nor in any way
19 interested in the outcome of the cause named in said
20 caption.

21 IN WITNESS WHEREOF, I have hereunto subscribed
22 by my hand this 12th day of April, 2007,

23
24 
25 LORRIE L. MARCHANT RPR, CRR, CSR NO. 10523

Danitz, Scott R.

4/6/2007

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Certified Copy

Case No. 04-1565

VIDEO DEPOSITION OF SCOTT R. DANITZ
April 6, 2007

ARLIN M. ADAMS, Chapter 11 Trustee of the
Post-Confirmation Bankruptcy of Estates of Coram
HEALTHCARE CORPORATION, and of CORAM, INC., a
Delaware corporation,
Plaintiffs,

vs.

DANIEL D. CROWLEY, DONALD J. AMARAL, WILLIAM J.
CASEY, L. PETER SMITH, and SANDRA L. SMOLEY,

Defendants.

APPEARANCES:

SCHNADER HARRISON SEGAL & LEWIS, LLP
By Barry E. Bressler, Esq.
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103-7286
215-751-2050
bbressler@schnader.com
Appearing on behalf of Plaintiffs.

KEKER & VAN NEST, LLP
By Laurie Carr Mims, Esq.
710 Sansome Street
San Francisco, California 94111-1704
415-391-5400
lmims@kvn.com
Appearing on behalf of Defendant
Daniel D. Crowley.

Also Present: Carie Finegan, Videographer

Danitz, Scott R.

4/6/2007

1 Q What is it?

2 A This was the company's presentation that
3 was being made at the meeting with Cerberus
4 Partners, Goldman Sachs and Foothill Capital on
5 February 15th.

6 Q Did you -- were you involved in the
7 preparation of this presentation?

8 A I was involved with parts of the
9 presentation, but not the entire presentation.

10 Q Which parts of the presentation were you
11 involved in?

12 A Without going through every -- I just
13 don't recall.

14 Q Were you involved in the financial
15 parts --

16 A Yes.

17 Q -- of --

18 A Again, it would have been similar to,
19 first, the financial information and then reviewing
20 it for any editorial comments and recommendations
21 for changes and consideration.

22 Q Let's go to COR-EQTY 0002749. Did Coram
23 Healthcare -- Healthcare create a target budget in
24 2000?

25 A Yes.

Danitz, Scott R.

4/6/2007

1 Q What was the target budget?

2 A It was one measurement of operating
3 profitability that was being used to measure
4 performance of the company and then eventually be
5 used to measure performance for any incentive
6 compensation for executives of the company.

7 Q Was the target budget presented to the
8 board?

9 A I recall it being presented to the board,
10 yes.

11 Q I direct your attention to the document
12 Bates labeled COR-EQTY 0002752, so it's a few pages
13 back.

14 The paragraph numbered 4, could you read
15 that out loud?

16 A Yes. All interest payments due on Bank
17 debt in 2000 are paid in cash, and in parentheses,
18 no PIKs, P-I-K -- capital P-I-K-s, 60 million
19 reduction in series B debt principal from the sale
20 of CPS Senior Credit Facility line remains at
21 44 million with half percent -- half a point percent
22 increase in July 2000.

23 Q Does the first sentence that you read
24 refresh your recollection as to the way that Coram
25 budgeted to pay its interest obligations?

Danitz, Scott R.

4/6/2007

1 A Yes, it does. It was to be paid in cash.

2 Q Was that part of the budget shared with
3 the board?

4 A Without going back to the original
5 presentation -- I'd have to see that presentation.
6 I just don't recall.

7 Q Directing your attention to the lower
8 right side of the page, looking at it where you can
9 read the text, there appears to be a date and time
10 stamp?

11 A Yes. December 22nd, 1999, 6 o'clock --
12 6:09 p.m.

13 Q Does the computer system that you used at
14 Coram at this time date stamp documents?

15 A It would only be on there if the preparer
16 put that command in the report that's being printed.

17 Q And what would it indicate?

18 A It can be different. I mean, you can put
19 anything in the footer or header of a report.

20 Q Okay.

21 A But that was the intent here, is in
22 preparation of this it was to put the date that the
23 report was prepared on -- on this particular page..

24 Q So you believe that this report was
25 prepared in December of -- December 22nd, '99?

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1 STATE OF COLORADO)

2) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER)

4 I, Vanessa D. Campbell, do hereby certify

5 that I am a Registered Professional Reporter and

6 Notary Public within the State of Colorado; that

7 previous to the commencement of the examination, the

8 deponent was duly sworn to testify to the truth.

9 I further certify that this deposition was

10 taken in shorthand by me at the time and place

11 herein set forth and was thereafter reduced to

12 typewritten form, and that the foregoing constitutes

13 a true and correct transcript.

14 I further certify that I am not related

15 to, employed by, nor of counsel for any of the

16 parties or attorneys herein, nor otherwise,

17 interested in the result of the within action.

18 In witness whereof, I have affixed my

19 signature and seal this 12th day of April, 2007.

20 My commission expires November 6, 2010.

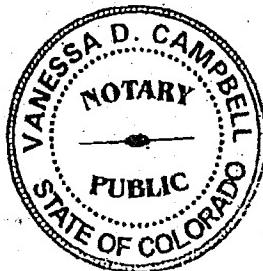
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